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the harmonization and unification of international trade law****Note by the Secretariat*****Contents**

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* This document was submitted late because of the need to undertake consultations on the content with relevant organizations.



I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.¹ Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.² Two reports of that nature have been prepared for consideration by the Commission at its thirty-ninth session in 2006 on procurement and security interests, contained in documents A/CN.9/598/Add.1 and A/CN.9/598/Add.2, respectively. Accordingly, those two topics are not addressed in this note.

3. This general report, prepared in response to resolution 34/142, is the second in a series which the Secretariat proposes to update and revise on an annual basis for the information of the Commission. It focuses on activities of international organizations primarily undertaken since preparation of the first paper (A/CN.9/584, May 2005) and related papers on electronic commerce (A/CN.9/579) and insolvency (A/CN.9/580/Add.1) and is based upon publicly available material and consultations undertaken with the listed organizations. This paper does not repeat information contained in the previous papers unless necessary to facilitate understanding of a particular issue.

4. The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies

ITU	International Telecommunications Union
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNCTAD	United Nations Conference on Trade and Development
WIPO	World Intellectual Property Organization

(b) Other intergovernmental organizations

ADB	Asian Development Bank
APEC	Asia Pacific Economic Cooperation Commonwealth Secretariat
EBRD	European Bank for Reconstruction and Development
EC	European Commission
Hague Conference	Hague Conference on Private International Law
OTIF	Intergovernmental Organization for International Carriage by Rail

OECD	Organization for Economic Cooperation and Development
Unidroit	International Institute for the Unification of Private Law
World Bank	International Bank for Reconstruction and Development
WCO	World Customs Organization
(c) International non-governmental organizations	
CTO	Commonwealth Telecommunications Organization
INSOL	International Association of Restructuring, Insolvency and Bankruptcy Professionals
IBA	International Bar Association
ICC	International Chamber of Commerce
III	International Insolvency Institute

II. Harmonization and unification of international trade law

A. International commercial contracts

Hague Conference

5. The Twentieth Diplomatic Session of the Hague Conference on Private International Law, held from 14-30 June 2005 in The Hague, unanimously adopted a Convention on Choice of Court Agreements ("the Choice of Court Convention") in international business-to-business cases. It is hoped that this instrument will complement the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"). The Choice of Court Convention addresses the obligation of a chosen court to hear the case, the obligation of a court not chosen in the original agreement to suspend or dismiss the case, and the obligation to enforce the judgment given by the chosen court. Specific rules clarify intellectual property and insurance issues as well as the treatment of damage awards and the relationship with other instruments. Currently, an Explanatory Report on the Convention is being prepared. Informal consultations on signature and ratification are under way.

Unidroit

6. Pursuant to the recommendation of the Governing Council of Unidroit, the Principles of International Commercial Contracts (PICC) are included as an on-going project in the work programme of the Institute.³ Subsequent to the adoption of the fourth edition of the PICC (May 2004), the Governing Council, at its eighty-fourth session (18-20 April 2005), preliminarily approved the following topics for inclusion in a future edition: unwinding of failed contracts, illegality, plurality of creditors and debtors, conditions and suretyship and guarantees. A new working group is scheduled to hold its first session from 29 May-2 June 2006 to consider inclusion of those topics.

B. International transport of goods

1. Transport by sea

OECD

7. On September 2002, the OECD Council agreed that negotiations should commence on a new Shipbuilding Agreement to review and address factors distorting normal competitive conditions in the shipbuilding industry. In particular, the Agreement was to address government support measures, especially subsidies, pricing and other related practices. The target date for finalizing the negotiations was the end of 2005.⁴

8. While substantial progress was made in developing key elements of the draft Agreement, some serious difficulties remained, and in September 2005 delegates to the Special Negotiating Group (SNG), established to advance the multilateral negotiations, agreed to "pause" those negotiations in order to allow the parties to reflect on their positions, consult and observe developments in the market, possibly resuming when the environment for their success had improved.

UNCTAD

9. UNCTAD continued its participation at sessions of the UNCITRAL Working Group III (Transport Law), submitting comments providing technical analysis on the issues under consideration and highlighting implications for developing countries, with respect to the development of a new international convention to govern the carriage of goods by sea as well as multimodal transport including a sea-leg.

2. Transport by land

UNECE

10. UNECE is working on a Protocol to the Convention on the Contract for the International Carriage of Goods by Road⁵ (Geneva, 19 May, 1956) (CMR) (prepared by Unidroit), aimed at the introduction of electronic consignment notes. The draft Protocol has been prepared by Unidroit. At its 99th session in October 2005, the Working Party on Road Transport (SC.1) decided to establish an editorial committee to finalize the drafting of the text of the additional Protocol. The editorial committee, comprising both Unidroit and UNCITRAL, has been requested to prepare a new draft for adoption at the 100th session of SC.1 in October 2006, taking into account written and oral comments made by members of SC.1 and without modifying the substance of the Unidroit proposal.

OTIF

11. OTIF is currently seeking to widen the scope of the Convention concerning International Carriage by Rail (9 May 1980)⁶ and harmonize it with other transport legislation in order to make possible, in the longer term, through-carriage by rail under a single legal system regime from the Atlantic to the Pacific. The new COTIF, as modified by the Protocol of Vilnius (adopted on 3 June 1999, entry into force expected on 1 June 2006) will allow direct carriage under a single legal regime (Uniform Rules concerning the Contract for International Carriage of Goods by

Rail—CIM) as long as at least either: (a) the place of taking over the goods or (b) the place designated for delivery, is situated in a Member State of COTIF and the parties to the contract of carriage so agree, for example, by using the CIM consignment note. OTIF will take on new tasks as soon as the 1999 Vilnius Protocol enters into force.

3. Inland waterway transport

UNECE

12. The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI Convention),⁷ adopted at a Diplomatic Conference organized jointly by CCNR, Danube Commission and UNECE (Budapest, 25 September–3 October 2000), entered into force on 1 April 2005. It currently has six Contracting Parties: Croatia, the Czech Republic, Hungary, Luxembourg, Romania and Switzerland. The CMNI Convention governs the contractual liability of parties to the contract for the carriage of goods by inland waterway and provides for the limitation of the carrier's liability.

4. Transport by air

UNCTAD

13. The carriage of goods by air is emerging as a field of increasing economic importance to developing countries. Liability arising from the carriage of goods by air is governed by several international conventions, namely the Warsaw Convention 1929,⁸ the Warsaw Convention as amended by a number of Protocols⁹ and supplemented by the Guadalajara Convention 1961¹⁰ (collectively known as "Warsaw system of conventions"), and the Montreal Convention 1999.¹¹ As a result of the co-existence at the international level of different uniform liability regimes, the international legal framework governing the carriage of goods by air is particularly complex. Against this background, UNCTAD is preparing a guide on aspects of air law, designed to assist developing countries in their understanding of the complex international framework of air law conventions, including in respect of effective uniform implementation of conventions at the national level. The guide is currently being finalized for publication and will in due course be available electronically at <http://www.unctad.org/ttl/legal>.

5. Intermodal transport

UNECE

14. As a result of the current work of UNCITRAL on transport law, the UNECE Working Party on Intermodal Transport and Logistics had postponed work on the preparation of a civil liability regime applicable to European intermodal transport covering road, rail, inland water and short sea transport. In February 2005, the UNECE Inland Transport Committee requested the Working Party to continue to closely monitor and evaluate all pertinent activities in this field, particularly those of UNCITRAL and to prepare, if appropriate, proposals for solutions at the Pan-European level. At its 29-30 March 2006 session, the Working Party reviewed a study commissioned by the European Commission and considered whether to pursue work on a pan-European solution establishing uniform intermodal liability rules that concentrate the risk on one party and provide for liability of the

contracting carrier for all types of losses irrespective of the modal stage where such loss occurs.¹² Such work would be carried out in close cooperation with intergovernmental organizations, such as ECMT and UNCTAD as well as with competent industry groups.

C. Electronic commerce and new technologies

APEC

15. In 2004, the Electronic Commerce Steering Group (ECSG) agreed to continue its activities to counter spam. It undertook a survey in 2005 on individual economies' approaches to spam, and considered possible cooperation with the APEC Telecommunication and Information Working Group. A preliminary summary of the APEC questionnaire on spam was presented to APEC in 2005.¹³

16. As part of its goal of building trust in e-commerce, ECSG is considering ways to better protect consumers from fraudulent and deceptive practices when buying goods and services online. Work is under way to help economies implement APEC's Voluntary Consumer Protection Guidelines for the On-line Environment.¹⁴ These cover international cooperation, education and awareness, private sector leadership, online advertising and marketing and the resolution of consumer disputes.

17. In 2005, the ECSG stated that it would continue its work on information privacy, spam, paperless trading, digital economy initiatives and would review the format of the Stocktake of Electronic Commerce Activities, a business-friendly inventory of the electronic commerce activities currently being undertaken by APEC forums.¹⁵ From 20 to 21 February 2006, APEC convened a Symposium on Information Privacy Protection in E-Government and E-Commerce,¹⁶ and on 22 February 2006, a meeting of the Paperless Trading Sub-Group,¹⁷ alongside a meeting of the Data Privacy Sub-Group¹⁸ from 22 to 23 February 2006, in Vietnam. From 18 to 21 May 2006, the 2nd APEC E-Commerce Business Alliance Forum¹⁹ will be held in Qingdao, China to discuss key e-commerce issues to accelerate the overall development process of e-commerce in the Asia-Pacific region.

Commonwealth Secretariat

18. The Commonwealth Action Programme for the Digital Divide (CAPDD) (adopted in 2002) comprises the report and recommendations of the Commonwealth Expert Group on Information Technology. It aims to provide greater access to ICT for Commonwealth countries to bridge the digital divide. The renewed focus of CAPDD in 2005 has targeted developing policy and regulatory capacity; modernizing education and skills development; entrepreneurship for poverty reduction; promoting local access and connectivity and regional networks, local content and knowledge. A series of workshops on the digital divide was conducted in 2005.²⁰

19. Another area of focus is electronic governance for good governance. Training was delivered on developing e-Government and e-Business strategies for senior technical ICT staff in the public sector, at the legislative level, to assist member countries in conceptualizing e-Governance strategies and the adaptation and adoption of the Secretariat's e-Governance model laws. From 27 February to

3 March 2006, the Commonwealth Secretariat convened a Regional Programme on e-Governance for Senior Public Professionals in Nicosia, Cyprus.²¹

20. The Commonwealth Secretariat has published books on e-commerce, and some of the more recent publications²² include *Trusted Services and Public Key Infrastructure* (published in 2001), *Law in Cyber Space* (published in 2001), *Electronic Governance and Electronic Democracy: Living and Working in the Wired World* (published in 2001), *Breaking the Digital Divide: Implications for Developing Countries* (published in 2003), *Electronic Connectivity for Workgroups: Working in the Wired World* (published in 2005).

EC

21. A study in October 2003 by the Interdisciplinary Centre for Law and Information Technology at the request of the EC into the legal and practical issues concerning the implementation of the EU Directive on Electronic Signatures²³ found that most of the EU Member States had more or less consistently transposed the EU Directive on Electronic Signatures into national legislation, but that the actual use of electronic signatures in the EU was limited with the number of supervised and accredited certification service providers issuing qualified certificates in the EU varying from country to country. A new report from 2006²⁴ found that the need for the legal recognition of electronic signatures has been met by the transposition of the Directive into the legislation of the Member States and found no need to revise the Directive at this stage. Nonetheless, given the problems of mutual recognition of e-signatures and interoperability at a general level which has impacted negatively on the free circulation of electronic signatures, the Commission will organize a series of meetings with Member States and relevant stakeholders to address the following issues: differences in the transposition of the Directive; clarification of specific articles of the Directive; technical and standardization aspects; and interoperability problems.

Hague Conference

22. The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Apostille Convention) facilitates the circulation of public documents that emanate from one State party to the Convention and need to be produced in another State party. It does so by replacing the cumbersome and frequently costly formalities of a full legalisation process by the mere issuance of an Apostille. Recommendation Number 24 of the Special Commission of the Hague Conference on the Practical Application of, inter alia, the Apostille Convention requires that State parties and the Permanent Bureau "work towards the development of techniques for the generation of electronic Apostilles". To that end, the Hague Conference on Private International Law and the Union of Latin Notaries organized the "First International Forum on e-Notarization and e-Apostilles" on 30 and 31 May 2005 in Las Vegas. The Forum unanimously confirmed that the spirit and letter of the Apostille Convention does not constitute an obstacle to the usage of modern technology and that the Convention's application and operation can be further improved by relying on such technologies. As a result, the Forum encouraged the development and application of e-Apostilles and e-Registers.

23. A Second Forum will be held in 2006. In addition, the Hague Conference and the National Notary Association of the United States will be launching the e-APP (electronic Apostille Pilot Program). The purpose of the e-APP is to further strengthen the efforts towards the implementation and promotion of an effective, low-priced, safe and sound system of electronic Apostilles (e-Apostilles) and electronic Registers of Apostilles (e-Registers).

ITU

24. ITU, a specialized agency of the United Nations, has the lead role in organizing the World Summit on Information Society (WSIS).²⁵ Envisaged in two phases, the first Summit was held in Geneva from 10 to 12 December 2003, where agreement was reached on the Declaration of Principles²⁶ (which set out the principles upon which to develop the global information society) and a Plan of Action²⁷ (which set out concrete action lines to advance the achievement of internationally-agreed development goals, including those in, inter alia, the Millennium Declaration,²⁸ by promoting the use of information and communications technologies (ICT) based products, networks, services and applications and helping countries overcome the digital divide). The second phase of WSIS was held in Tunis from 16 to 18 November 2005²⁹ focusing on implementing the agenda for development of achievable targets by 2015, and seeking consensus on unfinished business, inter alia, on the question of Internet governance.³⁰

25. During this second phase, spam was identified as a potential threat to the full utilization of the Internet and electronic commerce. ITU is implementing a series of activities on countering spam, in the shorter and longer term, to foster international cooperation, develop harmonized policy frameworks, and promote the exchange of information and best practices, as well as to provide support to developing countries in the field of spam.³¹ ITU issued two resolutions³² dealing with spam and also continues to maintain a website,³³ launched in 2004, which contains information concerning over forty countries that have taken anti-spam measures.

26. A survey was prepared for the WSIS Thematic Meeting on Cybersecurity, which took place from 28 June to 1 July 2005 and which found that regulators do not address the problem of spam in a substantive way. The paper recommended that legal rules specifically designed for spam should be adopted and existing laws on data protection and anti-fraud provisions should be aligned with anti-spam regulations.³⁴

OECD

27. In November 2004, OECD launched a new questionnaire intended to gather relevant information on the current usage of authentication across borders in OECD Member Countries. A synthesis report³⁵ was discussed at the meeting of the Working Party on Information Security and Privacy in May 2005 with the central aims being to: find examples of current offerings and actual implementation of authentication across borders; identify actual or potential barriers to current cross border use of digital signatures from the supplier/user perspective; and explore the extent to which cross border offerings of authentication meet or do not meet transaction needs. The "Report on the Use of Authentication across Borders",³⁶ published in November 2005, found robust developments in relation to

authentication in the public sector and, in general, non-discriminatory approaches to foreign signatures and services. It also found that public key infrastructure had become the method of choice for authentication. However, the report also found continuing problems in achieving interoperability due to the absence of recognition of foreign authentication services and lack of acceptance of credentials issued by other entities. The Report recommended the development of guidelines or best practices to facilitate interoperability, as well as the development of a framework for determining the prerequisites of authentication methods and initiatives to promote the use of authentication.

28. On 8 March 2006, OECD conducted a Workshop on the Future of the Internet.³⁷ The workshop, which brought together policy-makers, leading academics, private sector organizations, and civil society organizations to discuss the trends shaping the future of the Internet, explore the various approaches—technical, regulatory, and economic—that are being taken or can be taken to create new functionality for and increased trust in the Internet, promote its sustained growth and adoption, and identify opportunities for increased international cooperation on pressing issues.

UNCTAD

29. The ninth session of the Commission on Enterprise, Business Facilitation and Development (Geneva, 22-25 February 2005) of the Trade and Development Board approved recommendations on electronic commerce strategies for development. It recommended that UNCTAD should carry out research and policy oriented analytical work on the implications for trade and development of the different aspects of information and communications technologies (ICT) and e-business that fall within its mandate, with particular focus on those sectors of main interest to developing countries. It also recommended that UNCTAD continue to work, inter alia, in the field of ICT measurement, including the development of statistical capacity, to enable developing countries to measure the access, use and impact of ICT and monitor progress in this field. It further recommended that UNCTAD contribute to capacity-building in the area of ICT for development, particularly in trade sectors of special interest to developing countries or those that can be profoundly enhanced through the use of ICT, such as tourism, small and medium-sized enterprise (SMEs) development and poverty alleviation.

30. UNCTAD publishes annually its Information Economy Report, which has replaced the E-Commerce and Development Report that it published annually since 2000. The Report focuses on trends in ICT, such as e-commerce and e-business, and on national and international policy and strategy options for improving the development impact of these technologies in developing countries. The Report is available at www.unctad.org/ecommerce.

UNECE

31. At a UNECE-sponsored forum on paperless trade in international supply chains held on 20 and 21 June 2005,³⁸ UN/CEFACT presented its draft revision of its Recommendation 6 on the Invoice for International Trade.³⁹ The revised Recommendation seeks to resolve the obstacles to e-invoicing, and to provide a solution that can easily be implemented by both SMEs and large companies.

32. More recently, a workshop on International Standards to Stimulate Paperless Trade was conducted on 20 and 21 February 2006.⁴⁰ The goal of the two-day workshop was to present important international standards for document and information harmonization and exchange in international trade, to discuss the national and regional adaptation and implementation of those standards and to exchange know how and best practice on pilot projects and initiatives in the region. The workshop aimed to develop recommendations on the development, adaptation and implementation of global standards in the Asia Pacific Region. This was followed by a three-day technical workshop on UNeDocs Data Modelling and document design from 22 to 24 February 2006, in which seminar participants developed an international trade document which integrates the specific requirements of the region.

UNESCAP

33. UNESCAP convened a forum, "Public-Private Partnerships for Development in Asia and the Pacific" in Jakarta, Indonesia on 7 and 8 April 2006, which discussed, inter alia, issues on the development of information and communication technology.⁴¹

WCO

34. In April 2006, a WCO IT Conference & Exhibition will be held in Bangalore, India, to address, inter alia, issues involved in outsourcing, (such as, whether outsourcing or off-shoring of IT functions to a specialized service provider can help customs maintain a sustainable ICT infrastructure that responds to the demands from all its stakeholders, in particular the private sector) and also, the lessons to be learned from past experiences.⁴²

D. Commercial arbitration and conciliation

CTO

35. The CTO Council adopted the Protocol setting up the CTO Alternate Dispute Resolution Centre⁴³ ("ADR Centre") at its 45th meeting on 7 September 2005 in Yaoundé, Cameroon, in response to the growing number of disputes between commercial operators and between regulators and operators, or between governments and operators in CTO member countries. The ADR Centre assists in the settlement and resolution of disputes in the field of ICTs in accordance with its Adjudication Rules⁴⁴ (which provides for both online adjudication as well as full adjudication), Early Neutral Evaluation process⁴⁵ and its Arbitration Rules.⁴⁶ The CTO consulted with UNCITRAL in the drafting of these rules.

ICC

36. Following on from the adoption of a guide to the ICC Rules for Expertise in 2004, an outline for explanatory notes entitled "Practice of Expertise in ICC Expertise Dispute Resolution"⁴⁷ was presented to the ICC Commission on Arbitration⁴⁸ at its Meeting on 26 May 2005. The notes will cover topics such as the use of (i) experts in ICC Arbitration; (ii) experts under the ICC Rules for Expertise

as fact finders; and (iii) neutral experts as facilitators under the ICC ADR and Dispute Board Rules.

37. At its last meeting in Paris held on 22 May 2006, the Commission on Arbitration heard a proposal by the Steering Committee of the ICC Commission on Arbitration to create two new task forces being: (1) a task force to prepare suggestions on the reduction of time and costs in complex arbitrations; and (2) a task force on "amiable compositeurs".

38. As part of its regular publications, the ICC has recently published a new publication entitled "Parallel State and Arbitral Procedures".⁴⁹

WIPO

39. In 2002, WIPO published a report, "Intellectual Property on the Internet: A Survey of Issues" that describes the impact of digital technologies on intellectual property and, in particular, on copyright and the international intellectual property system.⁵⁰ As part of this survey, WIPO undertook an analysis of the advantages and disadvantages of online dispute resolution.⁵¹

E. International payments

Hague Conference

40. In the context of the development of a convention on the international recovery of child support and other forms of family maintenance, the Hague Conference on Private International Law, with the assistance of UNCITRAL, is preparing proposals for medium-neutral provisions to ensure that central authorities can employ the most rapid means of communication under the future instrument to transfer funds payable as maintenance, including financial mechanisms of protection against foreign exchange fluctuations. The new Hague Convention could take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology.

ICC

41. The ICC Commission on Banking Technique and Practice⁵² is in the process of revising UCP 500, its universally used rules on letters of credit. It is also exploring the possibility of developing common practices in forfeiting. Issues being discussed include whether to allow discounting of a deferred payment credit, whether to retain the concept of a "reasonable time" for the acceptance or refusal of documents, and whether to remove the term "on its face" from the rules. Based on these discussions, the UCP Drafting Group will issue a further revised draft, which will then be sent to ICC national committees for comment. This draft, with any further revisions, will be discussed at the next meeting of the Banking Commission in May 2006 in Vienna. It is hoped that the final revision of the rules will be available to banks and practitioners in 2006. More information about the new rules can be found in ICC's authoritative quarterly newsletter, DCInsight, available at www.iccbooks.com.

F. Competition law

UNCTAD

42. In line with its mandate, provided by successive UNCTAD Conferences (the latest being the Sao Paulo Consensus, containing the outcome of UNCTAD XI in 2004) and the "Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (the Set), adopted by the General Assembly in 2005, UNCTAD has continued to assist developing countries including least developed countries, as well as economies in transition in the formulation, adoption, implementation and revision of competition and consumer protection laws and policies.

43. In November 2005, the Fifth United Nations Conference to Review All Aspects of the Set unanimously adopted a resolution, which, *inter alia*, recognized "the role that competition policy plays in promoting competitiveness, building entrepreneurship, facilitating market access and entry, enhancing the equity of the international trading system and ensuring that trade liberalization brings about development gains". The Conference further reaffirmed the validity of the Set and called upon all member States to make every effort to implement fully its provisions. States were invited to increase cooperation between their competition authorities and Governments, especially when anti-competitive practices occur at the international level, such cooperation being particularly important for developing countries and economies in transition. The Conference also recommended that the General Assembly convene a Sixth Review Conference under the auspices of UNCTAD in 2010. The Conference also agreed that the forthcoming November 2006 session of the Intergovernmental Group of Experts on Competition Law and Policy would consider four specific competition policy issues for better implementation of the Set, as they relate to: (i) sectoral regulators; (ii) hard-core cartels; (iii) cooperation and dispute settlement mechanisms; and (iv) subsidies.

G. Trade facilitation

UNCTAD

44. UNCTAD contributes to policy and research, technical assistance and capacity-building, seeking, *inter alia*, to promote the implementation of common standards in transport, trade and customs matters, particularly among developing countries. The provision of technical assistance and support to capacity-building is geared towards the revision and upgrading of administrative and legal frameworks along the lines of the provisions of various international conventions and other instruments relating to trade facilitation.

45. UNCTAD has assisted developing countries and least developed countries to build their capacity to effectively participate in the multilateral trade negotiations process on trade facilitation and logistics services. UNCTAD organized workshops, seminars and brainstorming sessions and produced technical notes on specific trade facilitation tools and measures; resource persons actively contributed to the WTO programme of workshops on trade facilitation. A number of Geneva-based delegates from developing countries and least developed countries participated in the above-mentioned workshops with a view to strengthening the working relationship

between WTO delegates in Geneva and capital-based Government officials involved in trade facilitation.

46. UNCTAD also contributes actively to the work of the United Nations Centre for Trade Facilitation and Electronic Business, International Trade Procedures Working Group, International Trade and Business Processes Group 15 related to a revision of Recommendation 12 "Measures to Facilitate Maritime Transport Documents Procedures".

H. Insolvency

ADB

47. In April 2005, ADB presented its final report entitled "Regional Technical Assistance (RETA) 5975: Promoting Regional Cooperation in Insolvency Law Reforms", covering cross-border insolvency, informal workout practices and the intersection between secured transactions and insolvency law regimes.

48. This work by ADB led to consultation meetings with Asian Bankers Association (ABA) member banks in 2005 to discuss a draft model agreement for company restructuring developed by the RETA consultants. In October 2005, the ABA formally adopted a set of guidelines for informal workouts and endorsed a Model Agreement for Company Restructuring for use by financial institutions throughout the region. The ABA also released a position paper, "Providing the Legal and Policy Environment to Support Effective Informal Workout Regimes in the Asia-Pacific Region" which recommends (a) adoption of a fast-track formal workout regime; (b) enactment of legislation providing for Creditors' Voluntary Liquidation or Voluntary Administration; (c) promotion of a regional centre or centres for the resolution by arbitration of cross-border disputes; (d) strengthening of cross-border cooperation and assistance in insolvency cases; and (e) the undertaking of measures to enhance institutional capacity.

INSOL

49. INSOL is currently developing several publications to be launched within the next two years:

(a) Financing in Insolvency Proceedings. This publication, due to be launched in May 2006 will have 12 country chapters covering Australia, Brazil, Canada, Germany, the Hong Kong Special Administrative Region of China, India, Japan, Netherlands, Poland, South Africa, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Each country chapter will cover the different insolvency procedures that are available, and to what extent lenders get involved in providing finance to insolvent companies and related issues such as getting security, priority given to new lenders, and the role of the judicial process; and

(b) INSOL Lenders' Group project on Credit Derivatives. INSOL has initiated a project to produce guidance for insolvency practitioners and others on matters relating to the impact of credit derivatives in restructuring procedures. The objective of the publication will be to raise awareness and promote understanding of relevant issues, and provide a point of reference for those involved in restructuring.

The first working draft has been completed, and INSOL hopes to have this publication ready for distribution in September 2006.

50. Several other projects are being discussed internally at present. These include a publication on secured transactions, insolvency issues in the Asian region, and on distressed debt trading.

World Bank

51. In late 2005, the World Bank staff finalized the Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, which have been used since 2001 in assessing countries' insolvency and creditor rights systems, in the form of Reports on the Observance of Standards and Codes (ROSCs) and made them available for comment on the World Bank Global Insolvency Law Database (GILD) website.

52. Consultations between the World Bank, the UNCITRAL secretariat and the International Monetary Fund have achieved (a) consistency between the World Bank Principles and Guidelines, on the one hand, and the UNCITRAL Legislative Guide on Insolvency Law and the draft UNCITRAL Legislative Guide on Secured Transactions, on the other hand, (b) the development of a unified international standard in the area of insolvency law, and (c) the development of a ROSC Assessment Methodology. The complementary perspectives of the Principles and the Legislative Guide serve as important reference points for countries to evaluate and strengthen their insolvency and creditor rights systems in line with generally recognized standards of good practice. Given the international consensus on best practices reflected in the Bank's Principles and in the Recommendations that form part of the UNCITRAL Legislative Guide, the staffs of the Bank and the Fund will recommend that their respective Executive Boards recognize these Principles and Recommendations as constituting the unified standard for insolvency and creditor rights systems for the purpose of the Bank/Fund initiative on standards and codes. Insolvency and Creditor Rights ROSC assessments will be conducted on the basis of this unified standard on insolvency and creditor rights systems.

53. In the area of institutional frameworks related to insolvency, the World Bank has convened Global Judges Forums in 2003 and 2004 to encourage a dialogue among judges that oversee commercial enforcement and insolvency cases and to assist the World Bank to develop an Insolvency Court Practices Guide. A further forum is planned for 2006.

IBA

54. In May 2005, both the Section on Insolvency, Restructuring and Creditors Rights ("SIRC") and the Council of the IBA endorsed the UNCITRAL Legislative Guide on Insolvency Law.

55. The SIRC of IBA has established three new subcommittees: Insolvency Legislation and Legislative Reform and Harmonisation; Enforcement of Creditor's Rights; and Reorganization and Workouts. As international insolvency practice continues to evolve over the coming years, other Subcommittees may be created.

56. In addition to monitoring and reporting on developments in national insolvency legislation around the globe, the Insolvency Legislation and Legislative

Reform and Harmonisation Subcommittee will coordinate: (i) provision of expert staffing at working sessions of such world bodies; (ii) provision of expert presentations at programs and colloquiums organised by such world bodies; (iii) consultation; and (iv) drafting of submissions concerning legislative reform projects. All UNCITRAL related work will be coordinated directly with, and supervised by, SIRC's UNCITRAL Liaison.

57. The Subcommittee on Enforcement of Creditors Rights will focus on issues of interest to secured and unsecured vendors and lenders in liquidation and reorganization, including, *inter alia*, remedies, lien enforcement, extension of credit to insolvent or distressed debtors, inter-creditor priorities and protection of the value of collateral. The Reorganisation and Workouts Subcommittee will focus on both formal and informal restructuring, including, *inter alia*, issues relating to the negotiation, proposal, solicitation and litigation of plans of reorganization, schemes of arrangement, pre-packaged plans, compositions, expedited reorganization and out of court workouts.

III

58. In addition to its existing Committees, the III is establishing a committee on the use of arbitration in insolvency. It is also launching a joint project with The American Law Institute (ALI) to promote international approval and acceptance of the ALI's Principles for Cooperation in Transnational Cases.

OECD

59. The fifth meeting of the Forum on Asian Insolvency Reform (FAIR), organized by OECD in cooperation with APEC, the Australian Agency for International Development (AusAID), the Asian Development Bank, the World Bank and the Government of Japan, will take place in Beijing, PRC from 27 to 28 April 2006.

I. Corporate governance

EBRD

60. In 2005, EBRD completed an evaluation of the effectiveness (i.e. how the law works in practice) of legislation on corporate governance in all 27 countries of operation. The purpose of the initiative was to discover how corporate governance legislation is implemented and determine the effectiveness of mechanisms for a minority shareholder to obtain disclosure of corporate information and to obtain redress in case of breach of its rights. The results have been published in the Transition Report 2005 and will be detailed in the Spring 2006 edition of Law in Transition. The results of previous Legal Indicator Surveys (dealing with insolvency and enforcement of charges) are available on the EBRD website.⁵³

OECD

61. The OECD Steering Group on Corporate Governance coordinates and guides the Organisation's work on corporate governance and related corporate affairs issues. Much of the teams' non-member country work on corporate governance is

carried out through Regional Roundtables. Meetings of the Regional Roundtables, including Eurasia, South Eastern Europe and Latin America held during 2005 and 2006 discussed, inter alia, corporate governance reform and enforcement. The agenda for the seventh Asian Roundtable on Corporate Governance in September 2005 included (i) corporate governance of banks, (ii) a stock take of progress in policy reforms since the publication of the Asian White Paper in 2003, (iii) the role of the board in implementing the OECD Principles of Corporate Governance, and (iv) corporate governance of state-owned enterprises.

62. In April 2005, OECD endorsed Guidelines on Corporate Governance of State-owned Enterprises. These new Guidelines provide the first international benchmark to help governments assess the way they exercise their ownership responsibilities vis-à-vis state-owned enterprises (SOEs). They are non-binding and complementary to the OECD Principles of Corporate Governance.

63. In 2005, OECD also published case studies on good corporate governance in Latin America, examining how eight companies from Brazil, Colombia and Peru improved their corporate governance practices. Based on their experiences, this report gives practical advice and solutions for other companies in Latin America that are considering reforming their governance structure.

Notes

¹ *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, paras. 93-101.

² *Ibid.*, para. 100.

³ For further information, see <http://www.unidroit.org/english/workprogramme/study050/main.htm>.

⁴ OECD set up a Special Negotiating Group in 2002 to draw up a new Shipbuilding Agreement, with support from all OECD members and major world shipbuilding economies outside OECD. Source: 2004 OECD annual report, available at: <http://www.oecd.org/dataoecd/28/49/31621929.pdf>.

⁵ Entry into force: 2 July 1961, United Nations, *Treaty Series*, vol. 399, p. 189. Source: <http://www.untreaty.org>.

⁶ Entered into force on 1 May 1985.

⁷ Budapest, 22 June, 2001. Entered into force 1 April 2005.

⁸ Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 12 October 1929, entry into force: 13 February 1933. Available at <http://www.icao.int/icao/en/leb/wc-hp.pdf>.

⁹ The protocols are listed and available at http://www.icao.int/eshop/conventions_list.htm#Conventions.

¹⁰ Convention, Supplementary to the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, Guadalajara, 18 September 1961, entry into force: 1 May 1964. Available at <http://www.icao.int/icao/en/leb/guadalajara.pdf>.

¹¹ Convention on the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999, entry into force: 4 May 2003. Available at <http://www.icao.int/icao/en/leb/mtl99.pdf>.

¹² See, further, documents ECE/TRANS/162, para. 104 and TRANS/WP24/101, paras. 24-28, available at <http://www.unecce.org/trans/main/sc3/sc3.html>. Report from the March session still to be issued.

- ¹³ APEC Data Privacy Subgroup, Preliminary Summary of Member Economy Responses to the APEC Questionnaire on Spam (Doc No. 5), http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2005.html#DP51
- ¹⁴ A copy of these guidelines is available at http://www.apec.org/apec/documents_reports/electronic_commerce_steering_group/2004.html
- ¹⁵ A copy of the Stocktake is available online at: http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html
- ¹⁶ http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#SYM.
- ¹⁷ http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#PTS.
- ¹⁸ http://www.apec.org/content/apec/documents_reports/electronic_commerce_steering_group/2006.html#DPM.
- ¹⁹ http://www.apecsec.org.sg/apec/0506_E-CommerceForumExhibition.html.
- ²⁰ 18 March 2005, 2nd Co-ordinating Meeting on Commonwealth Action Programme for the Digital Divide, held in the United Kingdom; 14 June 2005, Consultation Workshop for Commonwealth Action Plan for Digital Divide (CAPDD), held in Malta; 11 August 2005, Commonwealth Action Plan for the Digital Divide Coordinating Committee Meeting, held in the United Kingdom; 5 September 2005, Digital Divide Programme hosted by CTO, held in Cameroon.
- ²¹ The workshop examined contemporary theory of governance in a digital world, as reflected in the innovative thinking in various countries. It also looked at the application of e-governance applied to specific jurisdictions, and e-governance principles that address the needs of participating governments.
- ²² For more information on publications, see http://publications.thecommonwealth.org/publications/html/DynaLink/cat_id/50/subcat_id/50/category_details.asp
- ²³ http://europa.eu.int/information_society/eeurope/2005/all_about/security/electronic_sig_report.pdf.
- ²⁴ Report on the Operation of the Directive 1999/93/EC on a Community Framework for Electronic Signatures (2006) 120, final, 15 March 2006 available at: http://europa.eu.int/information_society/eeurope/i2010/docs/single_info_space/com_electronic_signatures_report_en.pdf.
- ²⁵ The WSIS has as its primary aim the development of an inclusive and equitable information society. Following a proposal by the Government of Tunisia, the International Telecommunication Union adopted a resolution at its Plenipotentiary Conference in Minneapolis in 1998 to hold a World Summit on the Information Society (WSIS) and to place it on the agenda of the United Nations. The United Nations General Assembly (resolution 56/183) accorded the lead role for the preparatory work to ITU in cooperation with other interested organizations and partners.
- ²⁶ <http://www.itu.int/wsis/docs/geneva/official/dop.html>.
- ²⁷ <http://www.itu.int/wsis/docs/geneva/official/poa.html>.
- ²⁸ Resolution 55/2, adopted 8 September 2000. The declaration may be found at: <http://www.un.org/millennium/declaration/ares552e.htm>.
- ²⁹ The Report of the Tunis phase of the World Summit on the Information Society, Tunis, Kram Palexpo, 16-18 November 2005 is available at <http://www.itu.int/wsis/docs2/tunis/off/9rev1.doc>. Among the topics of Internet governance discussed, the WSIS underlined the importance and necessity of international cooperation amongst law enforcement agencies in dealing with cybercrime, and developing necessary legislation for investigation and prosecution of cybercrime. The WSIS also resolved to deal with the problem of spam, calling upon stakeholders to adopt a multi-pronged approach to counter spam (please see para. 14 for more details on countering spam), and with the protection of privacy and personal information and data on the Internet. The WSIS reaffirmed its commitment to turning the digital divide into digital opportunity, and to ensuring harmonious and equitable development for all. The WSIS recognizes that Internet governance includes more than Internet naming and addressing, and that it includes public policy issues, such as, inter alia, critical Internet resources, the security and

safety of the Internet, and developmental aspects and issues pertaining to the use of the Internet. It also includes social, economic and technical issues including affordability, reliability and quality of service.

- ³⁰ The paragraphs relating to internet governance in the Declaration of Principles may be found at http://www.wgig.org/docs/Paragraphs_Internet_Governance.doc. A Working Group on Internet Governance (WGIG) has been established to: develop a working definition of Internet Governance; identify the public policy issues that are relevant to Internet Governance; and develop a common understanding of the respective roles and responsibilities of governments, existing international organizations and other forums as well as the private sector and civil society from both developing and developed countries. For more information about the WGIG, see <http://www.wgig.org/>.
- ³¹ Information about ITU initiatives to counter spam may be found at: <http://www.itu.int/osg/spu/spam/intcoop.html>.
- ³² World Telecommunications Standardization Assembly, (WTSA) Resolution 51 on Combating Spam and Resolution 52 on Countering Spam by Technical Means.
- ³³ www.itu.int/osg/spu/spam/law.html.
- ³⁴ "A Comparative Analysis of Spam Laws: The Quest for a Model Law", Background paper for the ITU WSIS Thematic Meeting on Cybersecurity, available at http://www.itu.int/osg/spu/cybersecurity/docs/Background_Paper_Comparative_Analysis_of_Spam_Laws.pdf.
- ³⁵ The report was presented to the Working Party on Information Security and Privacy (WPISP) at its 19th meeting in May 2005 and was declassified by the Committee for Information, Computer and Communications Policy (ICCP) at its 49th session in October 2005.
- ³⁶ <http://www.oecd.org/dataoecd/1/CO/35809749.pdf>.
- ³⁷ For more information, see http://www.oecd.org/document/24/0,2340,en_2649_34223_36375896_1_1_1_1,00.html.
- ³⁸ Further information concerning the forum is available at <http://www.unecce.org/forums/forum05/welcome.htm>.
- ³⁹ See further, http://www.unecce.org/cefact/forum_grps/tbg/projects.htm.
- ⁴⁰ http://www.unecce.org/trade/workshop/malaysia_feb06/welcome.htm.
- ⁴¹ <http://www.unescap.org/LDCCU/PLUS.asp>.
- ⁴² For more information, see <http://events.wcoomd.org/aboutconfit2006india.htm>.
- ⁴³ More information concerning the CTO ADR Centre and its related documents may be found at: <http://www.cto.int/adr/index.php?page=about>.
- ⁴⁴ http://www.cto.int/adr/adr_Adjudication_Service.doc.
- ⁴⁵ http://www.cto.int/adr/adr_ENE_Service.doc.
- ⁴⁶ http://www.cto.int/adr/adr_arbitration.pdf.
- ⁴⁷ <http://www.iccwbo.org/policy/arbitration/id1785/index.html>.
- ⁴⁸ Consists of more than 400 international legal specialists named by ICC national committees in some 82 countries. For more information, see http://www.iccwbo.org/home/international_arbitration/commission.asp.
- ⁴⁹ <http://www.iccwbo.org/id3925/index.html>.
- ⁵⁰ Available at http://www.wipo.int/copyright/e-commerce/en/ip_survey/ip_survey.html.
- ⁵¹ WIPO, "Intellectual Property Rights on the Internet: A survey of the issues". WIPO/INT/02, December 2002, <http://www.wipo.int/copyright/e-commerce/en/html/index.html>.
- ⁵² For more information, see <http://www.iccwbo.org/home/banking/commission.asp>.
- ⁵³ <http://www.ebrd.org>.



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Legislative work of international organizations relating to public procurement

Note by Secretariat

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I. Introduction

1. This note sets out a summary of legislative work of international organizations relating to public procurement undertaken or planned to be undertaken in the past year or planned to be undertaken in the near future.¹ The note is not intended to be exhaustive but rather focuses on the work of the organizations that may have implications on the work of UNCITRAL Working Group I (Procurement) (the "UNCITRAL Working Group" or the "Working Group").

2. On the basis of the information provided in the present note, the Commission and/or the Working Group may wish to consider where the current work of the Working Group on the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (the "Model Law") (A/49/17 and Corr.1, annex I) may complement the work done by other organizations, and to identify appropriate cooperation and coordination strategies. The Commission may also wish to guide the Working Group as to the issues that it should consider in addition to those on its agenda in connection with the current project, or separately in due course.

3. The legislative work of the following organizations is described in this paper on the basis of publicly available materials and information received by the UNCITRAL secretariat from these organizations in response to its inquiries:

ADB	Asian Development Bank
AfDB	African Development Bank
APEC	Asia Pacific Economic Cooperation
COMESA	Common Market for Eastern and Southern Africa
EBRD	European Bank for Reconstruction and Development
EC	European Commission
IADB	Inter-American Development Bank
IAPSO	Inter-Agency Procurement Services Office
ITC	International Trade Centre
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
UNCTAD	United Nations Conference on Trade and Development
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNODC	United Nations on Drugs and Crime
WAEMU	West African Economic and Monetary Union
the World Bank	
WTO	World Trade Organization

4. The note complements a note by the Secretariat on current activities of international organizations related to the harmonization and unification of international trade law, contained in A/CN.9/598.

II. Summary of legislative work of international organizations relating to public procurement

A. Procurement in general and electronic procurement

1. World Trade Organization

5. The WTO activities in public procurement are currently in two main areas:² (i) the WTO working party on GATS rules continues negotiations on government procurement in services under GATS article XIII; and (ii) within the WTO Committee on Government Procurement that administer a plurilateral Government Procurement Agreement (the "GPA"), negotiations are underway with a view to improving the GPA, achieving the greatest possible extension of its coverage among all WTO parties and eliminating any remaining discriminatory measures and practices, as called for under article XXIV: 7 (b) and (c) of the GPA.

6. The most recent negotiations on government procurement in services under GATS article XIII in 2005 evolved around a proposal on the structure of an annex to the GATS on procedural rules for government procurement of services. Issues raised during the negotiations included the relationship to the GPA, the possibility of distinguishing between goods and services, thresholds and elements of procedural rules.³

7. As regards the second area, in a note by the Secretariat entitled "Current activities of international organizations related to the harmonization and unification of international trade law" (A/CN.9/584, para. 55) that was before the Commission at its thirty-eighth session, in 2005 (the "2005 Secretariat Note"), the Commission's attention was drawn to the current renegotiation of the GPA. While little information about the stage and extent of renegotiation is publicly available as the negotiations are held in informal meetings, it has been made known that the negotiations focus on the simplification and improvement of non-market-access-related provisions of the GPA, and during 2005, the Committee made substantial progress on the revision of these provisions. In addition, informal discussions have also been held on the so-called "horizontal" coverage matters as well as on various drafting proposals relating to market-access-related provisions.⁴ The target date for the overall conclusion of the negotiations pursuant to article XXIV:7 was set for the end of 2006.⁵

8. At the sessions of the Working Group, several UNCITRAL member States emphasized the importance of coordinating the approaches to drafting of any revised or new provisions in the Model Law and the Guide with the approaches on the same subjects taken in WTO. To this end, the Secretariat invited WTO representatives to the sessions of the Working Group and representatives have attended a majority of the sessions to date. In addition, informal consultations have been held between the Secretariat and WTO representatives. However, the confidentiality of the GPA renegotiation may limit the effectiveness of such measures.

9. The Commission may wish to appeal to WTO directly and/or through UNCITRAL member States that participate in the relevant WTO negotiation processes to improve coordination of the work in the relevant WTO bodies with the related work of the Working Group so that to ensure that revisions to the UNCITRAL Model Law and the Guide take into account relevant developments in the WTO.

2. Multilateral development banks (MDBs)

10. In the 2005 Secretariat Note, the Commission's attention was also drawn to the activities of a joint working group on Harmonization of Electronic Government Procurement (e-GP) (the "joint Working Group"), set up at the beginning of 2003 by the ADB, the IADB, and the World Bank, and subsequently joined by the AfDB, EBRD and Nordic Development Fund. (See A/CN.9/584, para. 50).

11. Since its establishment, the joint Working Group has issued two sets of requirements that have to be met in borrowing countries where e-GP systems are used for procurement under MDB financed projects: the E-Tendering Requirements (October 2005) and the E-reverse Auction Guidelines (December 2005) (analysed in paras. 14 to 20 below).⁶ These requirements supplement and do not replace the existing requirements that apply to traditional procurement processes for MDB funded activities. The preparation of another set of requirements, for electronic purchasing, is pending.⁷

12. The joint Working Group also sponsored the preparation of the Guide for Legislators and Managers on Authentication and Digital Signatures in E-Law and Security (December 2004) and the Guide on Buyer-Supplier Activation (October 2005) as well as a number of papers on more general issues of e-GP intended to guide countries of MDBs' operation in assessing their readiness for e-GP and in the implementation of different e-GP stages.⁸ A common disclaimer accompanies the Guides and the papers stating that the views expressed therein do not represent the official position of the MDBs and the MDBs do not guarantee the accuracy of the included information and do not accept any responsibility for any use thereof.

13. The documents were prepared in response to an increasing trend in borrowing countries to use electronic procurement systems and means for processing and managing MDB funded activities. The general position under these papers is that e-GP domestic rules in borrowing countries should be developed in a technologically neutral manner, to accommodate the pace of changes in technology. The documents are also formulated on the basis of a phased approach to the implementation of e-GP, i.e., electronic means can be used for selected steps in the procurement process, adding more steps to the system as resources, legislation or developments permit.

E-Tendering Requirements for MDB Financed Procurement

14. As stated in the introductory remarks to this document, the requirements do not intend to establish a standard path in the development and implementation of e-GP, rather the MDBs encourage individual governments to find their own path. Nevertheless, as stated further in the introductory remarks, to ensure that the basic principles of good governance, such as transparency, non-discrimination, equality of access, open competition, accountability and security of process, are observed, the requirements provide for standards and qualities that have to be met if e-GP systems

are to be used for procurement of goods, works, services or consulting services under MDB financed projects. Domestic e-GP systems' features, standards and operations in borrowing countries are thus to be evaluated for their compliance with the E-Tendering Requirements.

15. The E-Tendering Requirements, as stated therein, were formulated with the consideration in particular of costs and ease of participation in e-GP and importance of preserving good audit trails. They are grouped into the following 12 sections (providing *inter alia* for):

Section 1—System access (open, equal and unrestricted access with technical standards for interoperability, reliability and security);

Section 2—Advertising (publication in various media with no material difference between them; measuring the bidding period from the date of publication whichever is later; and online publication on a publicly-accessible website that is well-known nationally, well maintained, functional and affords free and unrestricted access);

Section 3—Correspondence, amendments, substitutions and clarifications (a possibility of making them electronically so long as print correspondence is used for bidders who request it);

Section 4—Bidding documents (non-advisability of splitting documents into combination of electronic and paper portions);

Section 5—Submission of bids/proposals (both paper and electronic form);

Section 6—Bid securities (general discouragement of their use in e-GP);

Section 7—Public bid opening (physical presence of bidders and simultaneous posting information that was read out onto a web site);

Section 8—Bid evaluation and contract award (the use of pre-approved automated evaluation systems subject to compliance with evaluation criteria, principles of economy, efficiency, equal opportunity and transparency and other requirements, and which result in contract award to the lowest-evaluated, responsive bidder);

Section 9—Information security management (its conformation with international standards and taking into account recognized best practices);

Section 10—Authentication (legal recognition and acceptance of digital certification/signatures issued in a bidder's country and other measures to ease participation by non-domestic suppliers);

Section 11—Charges for the participation in e-GP systems (participation generally free of charge); and

Section 12—Other conditions (application of the E-Tendering Requirements to third-party service providers who with their subsidiaries or parent companies, for avoidance of a possible organizational conflict of interest, are not eligible for award of contracts procured through the e-GP systems operated by them).

16. All issues addressed in sections 1 through 9 and 11 of the E-Tendering Requirements are being considered by the UNCITRAL Working Group. As regards authentication (section 10), the UNCITRAL Working Group agreed not to deal with

the issues of authentication in the Model Law but rather to discuss it in the Guide to Enactment with appropriate references to the applicable UNCITRAL instruments and regulatory framework that has to exist in the State enacting the revised Model Law.⁹ As regards the issue of third-party service providers and possible organizational conflict of interests, addressed in section 12 of the E-Tendering Requirements, the issue has been raised in the Working Group¹⁰ but has not been included as a separate topic on the Working Group's agenda. Nevertheless, the Working Group is expected to take it up in connection with its consideration of procurement methods and techniques where the risk of conflict of interests is particularly high, such as in the context of electronic reverse auctions and framework agreements.

E-Reverse Auction Guidelines for MDB Financed Procurement

17. The E-Reverse Auction Guidelines draw significantly on the E-Tendering Requirements. The guidelines are grouped into the following 11 sections: (i) system preparation; (ii) bidding specifications; (iii) advertising; (iv) operation; (v) correspondence, amendments and clarifications; (vi) access; (vii) bid securities; (viii) bid evaluation and contract award; (ix) information security management; (x) authentication; and (xi) other conditions. The requirements in sections (iii), (v), (vi) (except for the provisions establishing specific pre-qualification procedures in the electronic reverse auction (ERA) context), (vii), and (ix) through (xi) mostly repeat those contained in the E-Tendering Requirements, with some amendments to adapt them to ERAs. The ERA-specific requirements are found mainly in the following sections (establishing *inter alia*):

Section 1—System preparation (see para. 19 below);

Section 2—Bidding specifications (details about ERAs that have to be published with the bidding specifications);

Section 4—Operation (conditions that have to be met in the course of the running of auctions, including anonymity, confidentiality, automatic re-ranking of bidders, and content and extent of communication of information to bidders, and for closure of the auction);

Section 6—Access, in the provisions establishing special procedures to be followed if ERAs are preceded by pre-qualification (that ERAs must not be used if pre-qualification has reduced the number of bidders to a level that materially affects competition and under no circumstances when there will be less than three independent bidders); and

Section 8—Bid evaluation and contract award (that an ERA award must be based solely on prices where the contract is awarded at the lowest price to the corresponding qualified bidder; that contract awards should immediately be published online, together with the winner and the awarded price; and that there should not be any negotiation during or after the ERA process is closed).

18. Unlike the E-Tendering Requirements, the E-Reverse Auction Guidelines do not apply to the procurement of consulting services. The Guidelines' introductory remarks regarding general conditions for the use of ERAs state that "[n]ot all procurement is suitable for e-reverse auction. Such methods should deal only with contracts for which the specifications can be determined with precision, where price

is the only determinant and where there exist significant numbers of potential bidders. It must also be possible to transparently establish the respective ranking of the bidders at any stage of the electronic auction. Those aspects of the bids which imply an assessment of non-quantifiable elements should not be the object of electronic auctions. Care must also be taken not to apply such methods in markets where they may be especially vulnerable to market manipulation or anti-competitive behaviour such as collusion. Markets with only a limited number of independent qualified bidders, or markets dominated by one or two major players will be especially vulnerable to this danger."

19. This general statement is transposed to the concrete conditions for the use of ERAs contained in the "system preparation" section, which in particular require:

(a) Precise specifications of the procurement and suitability of the purchase matter and requirements for simple bidding processes where evaluation is solely in terms of price;

(b) Clear establishment and advertisement of the auction scope and the evaluation criteria for selection and award of a contract, sufficiently high purchase value to make it commercially viable for a competitive supplier base, but not so high as to materially reduce competition;

(c) Verification that all operational conditions for starting the auction have been met;

(g) Good intelligence on past transactions in the market place and market structure to monitor and prevent possible market manipulation, predatory pricing or collusion; and

(e) That ERAs be used only for purchases below the relevant international competitive bidding threshold, only for procurement processes where price is the sole determining factor (which is generally for goods only) and not be used where such use conflicts with the principle of open competition by locking out significant numbers of otherwise eligible bidders who do not have access to the required technology.

20. Consequently, the Guidelines prefer to treat ERAs as a special case of e-purchasing, rather than e-bidding, explaining this preference by the fact that ERAs are suitable for simple well-defined purchases where the determining factor is price or quantity and where a considered evaluation process, common in e-bidding, is not required. The Guidelines also, with the reference to the discussions in the UNCITRAL Working Group, adopted the approach of treating ERAs as a procurement method in itself, rather than an optional phase in other procurement methods.

21. The ERA-specific issues addressed in the Guidelines are being considered by the Working Group, including conditions for the use of ERAs and award criteria, which would in turn identify types of procurement (goods, works and types of services) suitable for ERAs and determine whether ERAs will be treated as a procurement method in itself or an optional phase in other procurement methods. The Commission, at its thirty-ninth session, will have the reports of the Working Group on its eighth and ninth sessions (A/CN.9/590 and A/CN.9/595, respectively) that contain a summary of the Working Group's consideration of these issues.

22. For other related joint activities of the MDBs, see sections B and C below.

3. Africa

African Development Bank

23. The AfDB is currently revising its Rules of Procedure for Procurement of Goods and Works and for the Use of Consultants, to harmonize them with those of other MDBs. It is also involved, in particular through country procurement assessment reports and by providing support to subregional organizations, such as COMESA and WAEMU (see paras. 24 to 28 below), in various legislative initiatives on harmonization and modernization of public procurement systems at national, sub-regional and regional levels.

Common Market for Eastern and Southern Africa

24. In the 2005 Secretariat Note, the Commission's attention was also drawn to the work by the COMESA secretariat on the implementation, with support from the AfDB, of the COMESA Public Procurement Reform Project (PPRP) (A/CN.9/584, para. 51). The PPRP programmed activities for the period until December 2004 were completed, in particular with the launch of the Internet-based Procurement Information System (CPIS)¹¹ and the development of the guidelines for the implementation of the 2003 COMESA public procurement Directive.^{12, 13}

25. A successor project, the Enhancing Procurement Reforms and Capacity Project (EPRCP)¹⁴ intends to fill gaps between the expected and achieved objectives under the PPRP.¹⁵ It, among others, envisages in the long run the development and signing of a regional procurement agreement that would provide national treatment for suppliers coming from COMESA member States and establish thresholds for each procurement category, above which contracts would have to be procured through regional procurement mechanisms. More focused attention is proposed to be given to the development of e-procurement: the EPRCP envisages upgrading the CPIS, as a platform for regional modern public procurement system, which is expected to deliver a range of more advanced procurement services, beyond the mere publicising of procurement information, such as enabling on-line submission of tenders.

26. The Working Group has established close relations with COMESA, which is regularly represented at the Working Group's sessions.¹⁶ In addition, the UNCITRAL secretariat cooperates with the COMESA secretariat on various issues related to legislative and technical assistance work.

West African Economic and Monetary Union

27. In the 2005 Secretariat Note, the Commission's attention was also drawn to the WAEMU programme of modernization and reform in public procurement, comprising two phases: (i) establishing the tools necessary for the reforms, and (ii) implementing them (A/CN.9/584, para. 51).

28. The first phase was finalised, with the adoption, by the WAEMU Council of Ministers, in December 2005, of the WAEMU Public Procurement Directives, including Local Government Regulations. The second phase covers capacity building at the level of the WAEMU Commission (to enable it to fully play its role

in dissemination and control of the implementation of the Directives), and assistance to WAEMU member States in the effective application of the Directives at the national level.

4. Asia

Asia Pacific Economic Cooperation

29. The APEC Government Procurement Expert Group (GPEG)¹⁷ is revising the APEC non-binding Principles on Government Procurement,¹⁸ in particular to incorporate the APEC Transparency Standards on Government Procurement¹⁹ and to minimize duplication among various non-binding Principles. The GPEG is also considering expanding the wording of the non-binding Principles on non-discrimination to reinforce their application as regards non-discrimination on the basis of gender. The revised draft of the non-binding Principles was due for consideration at the session of the APEC Committee on Trade and Investment in late May 2006. The GPEG also agreed to develop the initiative on assistance to small and medium enterprises (SMEs) through government procurement.

30. The content of the APEC non-binding Principles is being brought to the attention of the Working Group as and when they are relevant to the work of the Working Group. The Secretariat intends to continue doing so taking into account any revisions to the non-binding Principles that may be adopted within the APEC in the near future. For the subject of SMEs' participation in the public procurement, see further paragraphs 40 and 41 below.

Asian Development Bank

31. On 6 February 2006, ADB's Board of Directors approved the new Procurement Guidelines and Guidelines on the Use of Consultants. Both became effective on 1 April 2006.²⁰

5. European Commission

32. During the period under review, the EC issued a number of documents amending, supplementing and implementing the new European Union (EU) procurement Directives 2004/17/EC and 2004/18/EC (the "Directives"). The amendments to the Directives contained in directive 2005/51/EC of 7 September 2005 concern provisions on the format of publication of procurement-related notices, contained in the annexes to the Directives.²¹ In the light of new standard forms for publication of notices to be established in implementing measures, the references in the annexes to the old format established by directive 2001/78/EC were deleted.

33. The new standard forms were established by Commission Regulation (EC) No. 1564/2005 of 7 September 2005, which became binding for the use in all EU member States from 1 February 2006.²² As was noted in the press release,²³ the adoption of the new standard forms is seen as a part of a wider EU strategy on computerising public procurement procedures in the EU.²⁴ The new forms follow the same structure as the ones in directive 2001/78/EC but were streamlined and simplified, taking into account elements introduced by the Directives, such as framework agreements, electronic reverse auctions and dynamic purchasing systems. The greatest advantage of the new form comes with online use: publication

time in such case is shortened from 12 to 5 days and the time limits for the receipt of tenders or requests to participate can consequently be shortened by 7 days.²⁵

34. The conditions and rules for the use of the new standard forms are explained in the EC interpretative document, the Commission Staff Working Document on Requirements for Conducting Public Procurement Using Electronic Means under the Directives,²⁶ issued in July 2005 to facilitate the task of EU member States of transposing the Directives to their national systems. The document analyses the rules applicable to online communications and covers all stages of the contract award procedures that can be computerized. It also explains rules applicable to the new elements and purchase techniques of the Directives, such as framework agreements, electronic reverse auctions and dynamic purchasing systems.

35. The EC has also recently issued the following documents: (i) the detailed rules for the application of the procedure provided for in article 30 of Directive 2004/17/EC (Commission decision 2005/15/EC of 7 January 2005); (ii) the note explaining the regime laid down by Directive 2004/18/EC for competitive dialogue; (iii) the note explaining the regime laid down by Directive 2004/18/EC for framework agreements;²⁷ (iv) the note explaining the scope of "exclusive or special rights" within the meaning of Directive 2004/17/EC; and (v) the note explaining "contracts involving more than one activity" under Directive 2004/17/EC.²⁸

36. Its upcoming legislative initiatives include: (i) elaborating proposals to amend the directives defining specific requirements for remedies systems in the area of public procurement (directives 89/665/EC and 92/13/EC) in order to clarify and improve the efficiency of existing provisions; (ii) possible adoption by the end of 2006 of a communication on contracts outside the scope of the Directives, to explain and clarify how the principles of EU law should be applied to such types of contracts; (iii) adoption in the coming months of a directive modifying annexes to the Directives, to update the list of contracting entities/authorities following the last enlargement process; and (iv) the preparation of an updated version of the "Common Procurement Vocabulary" (CPV).²⁹

37. The Working Group has established close relations with the EC, which is regularly represented at the Working Group's sessions. In addition, the UNCITRAL secretariat is regularly in touch with the EC procurement experts regarding the EC treatment of various issues being considered by the Working Group. The results of consultation are subsequently reflected in notes by the Secretariat or oral reports to the Working Group. The EU legislative developments in the procurement field are also regularly brought to the attention of the Working Group by the EU member States participating at the Working Group's sessions.

6. Latin America

38. The responses to the Secretariat's enquiries indicate that there are currently no procurement-related legislative activities being undertaken by any of the Latin American regional or subregional organizations, and there is little work towards harmonizing procurement-related legislation on sub-regional and regional levels. Reforms or updates of procurement legislation and to some degree its harmonization in the region take place on a country-by-country basis mainly through the country procurement assessment reports (CPARs) within the auspices of the World Bank and IADB. The CPARs' recommendations for improvement and action plans usually include proposals for legislative reform.

39. The Secretariat has been informed that the CPARs' proposals for legislative reforms in the region rarely mention the Model Law as a standard to be considered. The Model Law is not much known and used when the national procurement-related legal reforms are being implemented. To improve the current situation with the limited awareness and use of the Model Law in Latin America and the Caribbean, the Commission may wish to appeal to its member States concerned and observers, in particular the MDBs active in the region, to seek active dissemination in the region of knowledge about the Model Law in its current form and the Working Group's work on its revision so that they can be taken into account in legal reforms. The Commission may also wish to invite suggestions from its member States and observers for other cost-effective outreach actions that should be taken to this end in the region.

40. Limited legislative initiatives by some regional organizations have mainly evolved around e-GP and promotion of participation in public procurement by SMEs in response to the high interest in the countries of the region in these areas. In particular, the OAS Inter-American Agency for Cooperation and Development (IACD), as part of OAS efforts to increase transparency in public procurement and more effectively combat corruption, signed a series of agreements with governmental agencies from OAS member States that intended to promote e-GP and transfer the relevant appropriate technology. The first in the series of such agreements was signed between OAS/IACD and the government of Mexico. Subsequently, the agreements were concluded with Peru, Ecuador and Costa Rica and with other countries. However, the projects did not bring the expected results and were abandoned. The IACD was abolished and replaced by a new department whose latest initiatives involve, apart from the e-GP, assistance to national authorities with implementing legislative measures for the protection and development of SMEs through *inter alia* promoting their participation in public procurement by setting margins of preferences and set aside programs.

41. The subject of SMEs' participation in public procurement has not been envisaged for consideration as a separate topic by the Working Group. SMEs' interests have been considered by the Working Group in the context of e-GP in general and ERAs in particular and are expected to be further considered in connection with these and other topics, such as framework agreements, suppliers' lists and the use of procurement to promote industrial, environmental and other socio-economic policies.

B. Transparency and anti-corruption in procurement

42. Multilateral instruments and initiatives have been developed in recent years to enhance international cooperation in the fight against corruption and fraud, most of them with the references to the area of public procurement. The subsections below do not intend to provide exhaustive information on them but rather illustrate some most recent examples (see also para. 40 above).

1. International instruments: United Nations Convention against Corruption³⁰

43. The United Nations Convention against Corruption, adopted by the General Assembly in October 2003, entered into force on 14 December 2005. A number of provisions of the Convention touch upon public procurement. Article 9 (1) of the Convention addresses public procurement specifically. Under the article, each State

Party to the Convention is required to take the necessary steps to establish appropriate systems of procurement based on transparency, competition and objective criteria in decision making that are effective, *inter alia*, in preventing corruption. The article further provides that such systems must address: (a) the public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders; (b) the establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication; (c) the use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; (d) an effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established are not followed; and (e) where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

44. The Convention envisages mechanisms for its implementation through the Conference of States Parties to the Convention. The Conference is to be assisted by the secretariat, which has in particular to ensure necessary coordination with the secretariats of relevant regional and international organizations on the implementation of the Convention.

45. The UNCITRAL secretariat has been in contact with representatives of the Conference secretariat (UNODC has been designated as such),³¹ regarding possible joint work to enhance the implementation of procurement-related provisions of the Convention, through legislative measures and technical assistance activities. As a first step, the UNCITRAL secretariat communicated to UNODC its analysis of the provisions of the Convention against the Model Law, pointing out that, although the only express corruption-related provision in the Model Law was in article 15, the Model Law by and large reflects the procurement-related provisions of the Convention. The analysis also pointed to some discrepancies, in particular that the requirements in article 9 (1)(e) of the Convention addressing conflicts of interest, screening procedures and training have no equivalent in the Model Law. The Secretariat intends to bring to the attention of the Working Group all the discrepancies between the Convention and the Model Law for its consideration in due course as part of its overall review of the Model Law.

2. Other initiatives

46. A number of international organizations, both governmental and non-governmental, touch upon various aspects of public procurement in their activities aimed at preventing corruption, fraud and other improprieties in the public sector. To name just a few, most multilateral donors have adopted specific anti-corruption policies to guide their development work, which in particular deal with procurement issues. Some donors are currently reviewing their development work policies to make them more effective in the fight against corruption, including in procurement.³² Poverty reduction strategies formulated with participation of donors increasingly envisage measures to increase transparency and prevent corruption in procurement. International non-governmental organizations, active in the area of

anti-corruption, have also developed guidance documents and information resources aimed at preventing corruption in public procurement.³³

47. A number of international organizations have launched internal management reforms, which *inter alia* include the revision of procurement regulations and rules to strengthen their provisions on transparency and make them more effective in the prevention of corruption, fraud and other improprieties.

48. At its sixth session (Vienna, 30 August-3 September 2004), the Working Group specifically considered the issue of the avoidance of fraud and corruption in public procurement and noted that, in its ongoing work, that issue would be one aspect to be taken into account when revising the Model Law and the Guide to Enactment.³⁴ Transparency in public procurement has subsequently been addressed in detail in the Working Group.

C. Procurement in the context of aid effectiveness

49. Connected to the activities described in the preceding section are the activities of international organizations aimed to increase aid effectiveness in recipient countries, in particular through the implementation of procurement reforms. The subsections below do not intend to provide exhaustive information on them but rather demonstrate major developments.

1. Developing diagnostics

50. The Paris Declaration on Aid Effectiveness of 2 March 2005³⁵ calls for the gradual alignment of donors' procurement rules, guidelines and practices with those existing in the recipient countries, provided that the latter comply with the internationally accepted standards.³⁶ To assess the compliance of the recipient countries' procurement systems with such standards and to monitor progress over time in improving country procurement systems, a number of donors and recipient countries, pursuant to their commitment under the Paris Declaration, are involved in the development of harmonised diagnostics and performance assessment frameworks.³⁷

51. Within the auspices of the Working Party on Aid Effectiveness of OECD Development Assistance Committee (DAC), a Joint Venture on Procurement has been set up to oversee the implementation of the Paris Declaration as it relates to procurement and instigate activities to ensure progress towards the procurement-related targets. To this end, the Joint Venture builds its activities on the work undertaken by the World Bank-OECD/DAC Roundtable on Strengthening Procurement Capacities in Developing Countries (2003-2004), which *inter alia* resulted in development, endorsement of and commitment to implement an integrated set of Good Practice Papers on benchmarking, monitoring and evaluation, capacity development and mainstreaming procurement.³⁸

52. The first meeting of the Joint Venture, attended by States, MDBs, UNDP/IAPSO, UNDG and other international and regional organizations and some national institutions, was held from 8 to 10 February 2006. The meeting accepted the Joint Venture's work plan for 2006-2008,³⁹ which envisages, among other things, development of a benchmarking tool and methodology for establishing

baselines and measuring progress against the Paris indicators/targets related to procurement. The meeting also considered a draft guide for assessment of procurement systems intended to be used as such a tool, to improve the consistency of assessments of national procurement systems and to facilitate measurements of compliance with benchmarks. The draft guide is based on the baseline indicators and sub-indicators proposed by the World Bank-OECD/DAC Roundtable (the "BLIs") (see the preceding paragraph). In the draft guide, further guidance is provided on BLIs and some BLIs are being refined to minimize risk of duplication and ambiguity and to fill in existing gaps.⁴⁰

53. The next meeting of the Joint Venture, expected to be held in December 2006, should look at the revised version of the tool. The outstanding issues include formulation of clear definitions of "international standards", "recognized standards", and "internationally accepted good practices", and further refinement of the BLIs. Also, the establishment of associated performance indicators is proposed, as the BLIs per se are not indicative of the quality of any procurement system.

54. It has been recognized in the Joint Venture that a wider consultation with procurement stakeholders and countries are needed to ensure that the tool is accepted. In this regard, the Commission may wish to note the relevance of the work being done in the Joint Venture to the work of the Working Group, especially as regards international standards and good practices in the area of public procurement. The Commission may wish to express hope that in the course of the Joint Venture's work, including in any efforts to formulate definitions of "international standards", "recognized standards", and "internationally accepted good practices" in the area of public procurement, due account would be taken of the UNCITRAL Model Law and the current work in the Working Group. In addition, the Commission may wish to note the relevance of the work being done in the Joint Venture also to the work of the technical assistance and coordination unit of the UNCITRAL secretariat that is involved in providing technical assistance to national bodies with the formulation and implementation of legal reforms in the field of international trade law, including in the area of public procurement. The Commission may therefore wish to call for closer coordination and cooperation between the Joint Venture and the UNCITRAL secretariat, and to that end suggest that the involvement of the UNCITRAL secretariat in the work of the Joint Venture would be highly desirable.

2. Other harmonization efforts

55. Pursuant to the 2003 Rome Declaration on Harmonization⁴¹ and the Paris Declaration, a number of multilateral donors have also been engaged in the efforts to harmonize their policies, procedures and guidance tools used in the context of aid delivery.⁴² Such efforts have been undertaken, for instance, in UNCTAD, in particular through its joint centre with WTO (ITC) and UNDG,⁴³ as well as by MDBs.⁴⁴

56. Apart from what has been described elsewhere in this note (see in particular section A.2), the MDBs' joint procurement policies harmonization efforts include regular meetings of the Heads of Procurement for the MDBs.⁴⁵ The harmonization of tender documents, guidelines and what is mutually considered to be best practice is one of the key activities undertaken by this group. The most recently prepared set of standard procurement documents and user's guide, dated May 2005, contain standard bidding documents and user's guide for procurement of works.⁴⁶

3. Relevance to the work of the Working Group

57. The international procurement benchmarks and standards proposed by the World Bank-OECD/DAC Roundtable have been brought to the attention of the Working Group when and as they are relevant to its work, and the UNCITRAL secretariat intends to continue doing so taking into account modifications proposed to these benchmarks and standards within the framework of the Joint Venture (see paras. 50 to 54 above).

58. In addition, at its sessions, the Working Group is regularly informed by representatives of development institutions of local procurement practices and issues arising on the ground in the application of procurement rules and procedures, including the Model Law, in the context of aid delivery. Mainly through the initiative of such development institutions, the subject of participation of local communities in public procurement has been included on the agenda of the Working Group. During its consideration of e-GP issues, the Working Group has also benefited from the contributions made by development institutions on the issues of access to procurement by SMEs and on cross-border procurement issues, which allowed the Working Group to address these issues in proposed revisions to the Model Law and the Guide.

59. The Commission may wish to express its appreciation to all institutions that have supported the work of the Working Group and emphasise the importance of continued and enhanced support for the work of the Working Group by a wide range of international, regional and sub-regional development institutions with expertise in the implementation of procurement reforms on the ground. The Commission may wish to invite all international organizations concerned to actively use the Working Group's forum for addressing difficulties encountered on the ground with the implementation of existing procurement standards and to bring to the attention of the Working Group emerging issues in the procurement field. Apart from the benefits of the shared practical knowledge and expertise, this will also contribute to harmonization of legal norms in the procurement field by disseminating information on the Model Law and the current work of the Working Group on its revision to a broader audience.

Notes

¹ The "legislative work" summarized in the present note covers, in addition to rule-formulating activities, preparation of any non-binding documents, such as guidelines and explanatory notes, in the areas of public procurement within the scope of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services. Consequently, legislative work of some organizations reviewed in the areas explicitly excluded from or not intended to be covered by application of the Model Law, such as defence procurement (see art. 1 (2) of the Model Law), public work concessions, public-private partnerships and privately-financed infrastructure projects, were not included in the summary of the present note. (For the legislative activities in these areas, see, in particular, in the EC procurement-related website, http://europa.eu.int/comm/internal_market/publicprocurement/dpp_en.htm and http://europa.eu.int/comm/internal_market/publicprocurement/ppp_en.htm). Also excluded from the scope of the present note are recently concluded or being negotiated bilateral and regional free trade agreements, which, although touch upon procurement-related issues covered by the Model Law, are concluded by individual countries or bloc of countries and thus fall outside the framework of legislative activities of any particular international organization.

- ² As regards a third area, transparency in government procurement, the working group of all WTO members addressing transparency in government procurement has discontinued its work. See the General Council's decision on the Doha Agenda work programme (the "July package", at http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm), of 1 August 2004, stating inter alia that there be no negotiation on the Singapore issue of transparency in government procurement.
- ³ See "Annual report of the Working Party on GATS rules to the Council for Trade in Services", 2005, para. 5, at http://www.wto.org/english/tratop_e/gproc_e/gpserv_e.htm.
- ⁴ The Secretariat understands that the proposed revisions may address, among other matters, framework agreements and electronic procurement techniques, such as electronic reverse auctions.
- ⁵ See "Report of the Committee on Government Procurement (December 2004-October 2005)", paras. 19-23, at http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.
- ⁶ Available at the joint e-GP portal <http://www.mdb-egp.org/>.
- ⁷ According to the introductory part of the E-Tendering Requirements.
- ⁸ These papers, issued under the series of "Strategic Electronic Government Procurement", include "Introduction for Executives," "Standards framework" and "Roadmap" (all dated March 2004), "Strategic Planning Guide" (June 2004) and "Readiness Self-Assessment" (as reviewed in November 2004). These and other documents can be accessed through the e-GP Tool Kit at <http://www.mdb-egp.org/data/default.asp>.
- ⁹ See the Report of Working Group I (Procurement) on the work of its seventh session (A/CN.9/575), para. 34.
- ¹⁰ Ibid., para. 54.
- ¹¹ A centralized regional website <http://simba.comesa.int:90/cpis/>, for collecting and disseminating procurement information in the COMESA member States.
- ¹² The Directive was adopted by the COMESA Authority of Heads of States and Governments at its eighth summit at Khartoum in March 2003. It inter alia recommends the UNCITRAL Model Law as the model for local procurement law reforms in the COMESA member States.
- ¹³ The guidelines, available at the UNCITRAL secretariat, contain essential components of national legal framework and institutional and organizational arrangements necessary to implement the Directive.
- ¹⁴ Developed by the COMESA secretariat pursuant to the decision taken at the seventeenth meeting of the COMESA Council of Ministers (Kampala, 4-5 June 2004).
- ¹⁵ The EPRCP entails deepening the harmonization of public procurement laws, regulations, procedures and practices in COMESA with a view to achieve total compliance of COMESA member States' procurement laws and regulations with the COMESA public procurement Directive; improving local procurement systems; strengthening the local capacities of COMESA member States in public procurement; and encouraging full utilization of the CPIS.
- ¹⁶ The Working Group's sessions have been chaired by the COMESA Legal Director since 2004.
- ¹⁷ The Group was established in 1995 as a sub-forum of the APEC Committee on Trade and Investment.
- ¹⁸ Available at http://www.apecsec.org.sg/apec/apec_groups/committees/committee_on_trade/government_procurement.html.

- ¹⁹ See section I of the "APEC Leaders' Statement to Implement APEC Transparency Standards", 16th APEC Ministerial Meeting (Santiago, Chile, 17-18 November 2004), document 2004/AMM/028, available at http://www.apecsec.org.sg/apec/apec_groups/committees/committee_on_trade/government_procurement.html.
- ²⁰ Available at <http://www.adb.org/Documents/Guidelines/Procurement/guidelines-April-2006.pdf> and <http://www.adb.org/Documents/Guidelines/Consulting/consultant-guidelines-April-2006.pdf>, respectively.
- ²¹ Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC.
- ²² The new forms are available online in a structured XML format at the SIMAP website: <http://simap.eu.int/>.
- ²³ IP/05/1248 of 11 October 2005.
- ²⁴ See "Action Plan for the implementation of the legal framework for electronic public procurement", of 13 December 2004, available at http://europa.eu.int/comm/internal_market/publicprocurement/docs/eprocurement/actionplan/actionplan_en.pdf.
- ²⁵ See articles 36 (3) and 38 (5) of Directive 2004/18/EC and articles 44(3) and 45(3) of Directive 2004/17/EC.
- ²⁶ Available at http://europa.eu.int/comm/internal_market/publicprocurement/e-procurement_en.htm.
- ²⁷ Analysed in detail in document A/CN.9/WG.I/WP.44 and Add.1, submitted to Working Group I (Procurement) at its ninth session (New York, 24-28 April 2006).
- ²⁸ All documents are available at http://europa.eu.int/comm/internal_market/publicprocurement/index_en.htm.
- ²⁹ The CPV is the EU-wide single classification system for public procurement contracts, established by Regulation (EC) No. 2151/2003 to standardise the references used by contracting authorities and entities to describe the subject matter of their contracts. For the current CPV and its proposed draft version under consultation for updating, see <http://europa.eu.int/yourvoice/ipm/forms/dispatch?form=cpv&lang=en>.
- ³⁰ General Assembly resolution 58/4, annex.
- ³¹ See *ibid.*, para. 8.
- ³² See, for example, para. 29 above on the revision of the APEC NBPs. ADB as well has been revising its policies to improve the effectiveness of their development activities in countries of their operation, especially as regards the promotion of transparency, accountability and anti-corruption measures.
- ³³ For example, see the activities of the Transparency International in public procurement <http://www.transparency.org.uk/pcoat.htm>. In the focus of their procurement-related work are areas prone to corruption, such as defence procurement, construction projects and aid delivery. Within its auspices, a series of documents and guidelines related to procurement have been prepared, for example "Preventing corruption on construction projects: Risk assessment and proposed actions for banks, export credit agencies, guarantors and insurers" of March 2005. It also works on the topics of debarment, local government procurement and the right to access to information.
- ³⁴ See the Report of Working Group I (Procurement) on the work of its sixth session (A/CN.9/568), para. 11.
- ³⁵ See <http://www.aidharmonization.org/>.
- ³⁶ See the procurement related indicators of the Paris Declaration: 2b – the establishment of reliable country procurement systems, and 5b—the use by donors of these country systems.

- ³⁷ Recipient countries and donors have jointly committed to use mutually agreed standards and processes to carry out diagnostics of the state of country procurement systems in recipient countries and identification of measures for effective performance of public procurement systems, develop sustainable reforms and monitor implementation.
- ³⁸ See DAC Guidelines and Reference Series—Harmonizing Donor Practices for Effective Aid delivery, Volume 3, "Strengthening Procurement Capacities in Developing Countries," OECD/DAC Roundtable on Procurement. Available at <http://www.oecd.org/dataoecd/12/14/34336126.pdf>.
- ³⁹ The revised version of the work plan as of 26 January 2006 is available at <http://www.oecd.org/dataoecd/15/6/36233324.pdf>.
- ⁴⁰ In the draft guide, the BLIs are grouped into the following pillars: legal and regulatory framework, institutional framework and management capacity, procurement operations and market practices, and integrity and transparency of the public procurement system. As regards each sub-indicator, the key aspect or a standard to be met is highlighted and a set of four scenarios describing four degrees of compliance with the standard is set. Associated with each scenario is a score from 3 to 0. By using an appropriate scoring system to aggregate scores for sub-indicators a score for the indicator is achieved. Under S1 scoring system, applied to interdependent sub-indicators, a failure to meet one sub-indicator results in failure of the entire indicator and score for the entire indicator is the lowest of the sub-indicators. Under S2 scoring system, applied when sub-indicators are independent from each other, scores are averaged and rounded to the next whole number. The two annexes to the draft guide provide for good practice provisions for national competitive bidding (Annex 1) and suggested minimum content of the bidding documents (Annex 2).
- ⁴¹ Available at <http://www1.worldbank.org/harmonization/rome1f/Documents/RomeDeclaration.pdf>.
- ⁴² Under the Paris Declaration, donors have committed to progressively rely on partner country systems for procurement when the country has implemented mutually agreed standards and processes, and to adopt harmonised approaches when national systems do not meet mutually agreed levels of performance or donors do not use them.
- ⁴³ See, for example, the joint manual of IMF, ITC, UNCTAD, UNDP, the World Bank and the WTO, entitled "Integrated framework (IF) for trade-related technical assistance for least developed countries," document UNCTAD/LDC/2005/2, of 1 July 2005.
- ⁴⁴ See, for example, para. 23 above on the revision of the AfDB procurement rules.
- ⁴⁵ The most recent annual meeting was held from 13 to 16 February 2006 in Manila, the Philippines.
- ⁴⁶ The earlier sets, dated May 2004, contained standard: requests for proposals (selection of consultants) (including forms and sample contracts); prequalification documents and user's guide for procurement of civil works; bidding documents for procurement of goods (as revised in May 2005); and bidding documents for procurement of works (smaller contracts). All available at the World Bank website.



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Current activities of international organizations related to the harmonization and unification of law relating to Security Interests

Note by the Secretariat*

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* The late submission of the document reflects the need to await completion of the 11th session of Working Group VI (1-5 May 2006).



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I. Introduction

1. At its thirty-third session in 2000, its thirty-seventh session in 2004 and thirty-eighth session in 2005, the Commission considered coordination of international organizations in the area of security interests on the basis of notes prepared by the Secretariat (A/CN.9/475, A/CN.9/565 and A/CN.9/584 respectively). This note updates the information included in these notes. It focuses on activities of international organizations primarily undertaken since 2000 to develop harmonized and unified international trade law instruments in the area of secured credit law and is based upon publicly available material and, to the extent possible, consultations undertaken with the listed organizations.

2. The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies:

WIPO	World Intellectual Property Organization
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(b) Other intergovernmental organizations:

EBRD	European Bank for Reconstruction and Development
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European Commission	Commission of the European Union
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Hague Conference	Hague Conference on Private International Law
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OAS	Organization of American States
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Unidroit	International Institute for the Unification of Private Law
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World Bank	International Bank for Reconstruction and Development
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II. Harmonization and unification of law relating to security interests

A. UNCITRAL¹

3. Recognizing the importance of access to affordable credit to economic growth and international trade, the Commission at its thirty-fourth session in 2001 established a Working Group on security interests to develop a flexible and effective legal framework for secured credit.² At its thirty-fifth session in 2002, the Commission confirmed the mandate given to Working Group VI (Security Interests) and affirmed that the mandate should be interpreted widely to ensure an appropriately flexible work product, in the form of a legislative guide.³ The Working Group, in the context of the mandate given by the Commission, decided to extend the scope of the draft legislative guide ("the draft Guide") to receivables, proceeds of letters of credit, bank accounts, negotiable documents, negotiable instruments and intellectual property rights.⁴

4. So far, the Working Group has held nine sessions and developed chapters on key objectives, scope, approaches to security, creation, third-party effectiveness, priority, enforcement, insolvency, acquisition financing, conflict of laws and transition.⁵ In addition, the Working Group has held two joint sessions with the UNCITRAL Working Group on Insolvency (which was developing and has now completed the Legislative Guide on Insolvency Law) to discuss the insolvency chapter of the draft Guide.⁶

5. The Working Group has also worked closely with the Hague Conference in the formulation of the chapter on conflict of laws of the draft Guide. In addition, the Working Group has coordinated with Unidroit, which is preparing a text on intermediated securities (see paras. 6-16), and with the World Bank, which has finalized a set of principles for effective insolvency and creditor rights systems.

B. Unidroit⁷

1. Draft convention on substantive rules regarding intermediated securities

6. Unidroit is currently preparing a draft convention on substantive rules regarding intermediated securities ("the draft Convention"). The first and second meetings of the committee of governmental experts were held in Rome from 9 to 20 May 2005 and from 6 to 14 March 2006, respectively. A third meeting is scheduled for November 2006.

7. At the second meeting of governmental experts, it was agreed that the two secretariats will cooperate and report to their respective bodies on issues of common interest and in particular on the treatment of proceeds of intermediated securities that take the form of assets within the scope of the draft Guide or of proceeds of assets within the scope of the draft Guide that take the form of intermediated securities.

8. The Commission may wish to note that securities (in general, not only intermediated securities that are the subject of the draft Convention) are excluded from the scope of the draft Guide as original encumbered assets.⁸ However, securities may be affected by the recommendations of the draft Guide in two instances.

9. First, if a security right in securities secures a receivable, negotiable instrument or other obligation and the receivable is assigned or a security right is created in the negotiable instrument or other obligation, a security right is automatically created in the securities and becomes automatically effective against third parties. This rule does not affect any third-party rights, priority or enforcement requirements existing under securities law.⁹ For example, under the draft Convention a security right in intermediated securities that was made effective against third parties by a book entry or control under securities law will have priority over a competing right that was made effective under other law.¹⁰

10. In addition, securities may be affected by the recommendations of the draft Guide if they constitute proceeds of an asset covered in the draft Guide (e.g. inventory or funds in a bank account). The security right in the original encumbered assets continues in the proceeds.¹¹ A separate act is not necessary for the security right in the proceeds to be effective against third parties.¹²

11. In order to better reflect the fact that securities and other assets outside the scope of the draft Guide may be affected by the draft Guide, the Secretariat suggested that the Working Group may wish to consider whether a qualified exclusion leaving securities outside the scope of the draft Guide only to the extent there is special legislation would be more appropriate than an outright exclusion which would leave securities out of the scope of the draft Guide even if there is no such special legislation, thus leaving a gap in the law.¹³

12. If the Working Group were to adopt this approach, methods of achieving third-party effectiveness (e.g. a book entry or a control agreement) other than registration would need to be preserved and a new recommendation may need to be added to preserve the priority of rights made effective against third parties through one of these special methods.

13. Such an approach would be consistent with the approach followed in the draft Guide with respect to attachments to immovable property or movable property subject to a specialized registration or title certificate system. Under this approach, a security right in attachments to immovable property is subordinate to a security right in the relevant immovable property or in the relevant movable property subject to a specialized registration or title certificate system, unless it is registered first in the immovable registry or in the specialized registry or is noted on the relevant title certificate, as applicable.¹⁴

14. In addition, this approach would be consistent with the draft Convention, under article 6 (1) of which a security right in securities (as original encumbered assets or as proceeds) that was made effective against third parties under the draft Convention has priority over a security right that was made effective against third parties under law outside the draft Convention (e.g. a law based on the recommendations of the draft Guide). The rationale underlying this approach is that the book entry or control related system established by the draft Convention could not be relied upon if a security right in intermediated securities created and perfected under other law had priority over a security right made effective against third parties under the draft Convention.

15. Moreover, this approach would avoid excluding from the scope of the draft Guide directly held securities to the extent they are not subject to any special legislation (even the Unidroit draft Convention does not apply to directly-held securities). Thus, no gap would be left with respect to, for example, security rights in shares of a subsidiary all held by the parent company, since such security rights are involved in many commercial loan transactions.

16. A different issue is what law applies to proceeds of securities that are within the scope of the draft Guide (e.g. securities are sold and the proceeds are deposited in a bank account). It seems that, if proceeds of bank accounts in the form of securities should be subject to the law governing securities, proceeds of securities in the form of funds in a bank account should be subject to the law governing security rights in funds credited to bank accounts, at least with respect to third-party effectiveness, priority and enforcement of a security right. This approach seems to be consistent with the approach followed in the draft Convention, since, if a secured creditor has obtained a control agreement, the account holder cannot dispose of or encumber the securities without the consent of the secured creditor. If the secured creditor does not obtain a control agreement or has authorized further dispositions

or encumbrances by the account holder, the secured creditor cannot claim priority over another secured creditor with a security right in proceeds from the disposition of the securities credited to a bank account. As this is the result of consultations with experts familiar with the draft Convention, it may need to be further examined and confirmed.

17. The Commission may wish to note this matter and request the Working Group to submit its proposals with the rest of the draft Guide, which is expected to be adopted by the Commission at its fortieth session in 2007.

2. Principles and rules on trading in securities in emerging markets

18. Unidroit is preparing an instrument on principles and rules capable of enhancing trading in securities on emerging markets. Work is envisaged to start in decentralized, regional working groups in 2006.

3. Draft model law on leasing

19. Unidroit is undertaking the drafting of a model law on leasing ("the draft Model Law") in cooperation with the International Finance Corporation, aimed in particular at assisting developing countries and economies in transition. A special advisory board has already held three sessions in Rome (its first from 17 to 18 October 2006, its second from 6 to 7 February 2006 and its third from 3 to 5 April 2006). At its third session, the advisory board considered the second preliminary draft of the Model Law,¹⁵ as well as comments and suggestions by the UNCITRAL secretariat to avoid overlap and conflicts between the draft Model Law and the draft Guide.¹⁶

20. The overlap and conflicts between the draft Model Law and the draft Guide are the result of the fact that both texts cover leases that serve security purposes (i.e. financial leases) treating them differently.¹⁷ For example, as a result of articles 1 and 3 of the draft Model Law, in effect registration is referred to the law of the State where the encumbered/leased asset is located, the law of the State where the grantor/lessee has the centre of its main interests, or the law of the State whose law governs the security/lease agreement. Such a result would be inconsistent with recommendation 136 of the draft Guide,¹⁸ according to which the law applicable to the creation, third-party effectiveness (including registration) and priority of a security right (including the right of a financial lessor) in movable property would be the law of the State where the encumbered/leased asset is located (exceptions apply to leases in mobile equipment and to leases in movable property that is subject to title registration¹⁹).

21. At the third session of the advisory board in April 2006, it was indicated that implementation notes might be the way to address the conflict of the draft Model Law with current secured transactions laws that treat financial leases as secured transactions, as well as with the law of countries that will adopt the recommendations of the draft Guide in the future.²⁰ It is doubtful that this would be sufficient. More importantly, this approach would not address the concern that a special law that covers financial leases, i.e. a transaction that performs security functions, could detract from the approach recommended in the draft Guide that countries should adopt a law that systematically and comprehensively covers all transactions that perform security functions.

22. The draft Model Law is expected to be submitted to the Governing Council at its meeting to be held in Rome from 8 to 11 May 2006 for consideration of the most appropriate follow-up action. The Secretariat of Unidroit is expected to recommend that the draft Model Law be submitted to Governments for finalization at a special conference in October 2006 and then at an extraordinary session of the Unidroit General Assembly to be held in Rome from 27 to 29 November 2006.²¹

23. The Commission may wish to consider this matter and recommend that the draft Model Law exclude financial leases, or, if financial leases were to be included, the Model Law (i) be limited to contractual issues or (ii) defer to secured transactions law or (iii) be coordinated with the recommendations of the draft Guide.

4. Protocols to the Cape Town Convention

24. Unidroit, jointly with the Intergovernmental Organization for International Carriage by Rail (OTIF),²² is finalizing the second Protocol to the Convention on International Interests in Mobile Equipment (Cape Town, 16 November 2001),²³ that deals with matters specific to railway rolling stock (the draft Rail Protocol). The Rail Registry Task Force established to prepare an international registry system and related aspects submitted the draft Rail Protocol to the Unidroit Governing Council in April 2005. The Protocol is to be submitted for adoption by a diplomatic conference in the near future.

25. A third protocol to the Cape Town Convention dealing with matters specific to space assets (a preliminary draft Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Space Assets) is being drafted. The third session of the committee of governmental experts is scheduled to be held in Rome in September/October 2006. Additional protocols that may cover agricultural and construction equipment are also under consideration.

C. Hague Conference²⁴

26. A commercial edition of the Explanatory Report on the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (Hague Securities Convention) was published in 2005. The Report provides the most authoritative and comprehensive explanations of the Convention and is available on the website of the Hague Conference.²⁵ The Hague Conference continues to work closely with UNCITRAL on the conflict-of-laws chapter of the draft Guide.

D. EBRD²⁶

27. In 2004, in the context of its work on the modernization of secured transactions legislation, the EBRD published the EBRD Guiding Principles for the Development of a Charges Registry.²⁷

E. European Commission²⁸

1. The financial collateral, the late payment and the settlement finality directives

28. The European Commission issued a Financial Collateral Arrangements Directive on 6 June 2002 to improve the legal certainty of financial collateral arrangements,²⁹ a Directive on Combating Late Payment in Commercial Transactions on 29 June 2000,³⁰ and a Settlement Finality Directive in May 1998.³¹ The Secretariat received informal comments and suggestions from the European Central Bank on the relationship between the draft Guide's recommendations on bank accounts and these directives. The conclusion seems to be that there is no conflict between the recommendations in the draft Guide and these directives.³²

2. The proposal for a regulation on the law applicable to contractual obligations (Rome I)

29. At its thirty-seventh session in 2004, the Commission noted efforts in the European Commission towards development of a new community instrument in which the issue of the law applicable to third party effects of assignments, which had been settled in article 22 of the United Nations Convention on the Assignment of Receivables in International Trade (the "United Nations Assignment Convention") by reference to the law of the State in which the assignor was located, would be addressed.

30. At that session, it was widely felt that the rule in article 22 of the United Nations Assignment Convention provided certainty for third parties and thus would most likely increase the availability and reduce the cost of credit and that adoption of a different rule by the European Union would not only have a negative impact on the availability and the cost of credit but would also produce disharmony in trade relationships involving European Union parties and non-European Union parties, where a priority dispute was brought before a court in a non-European Union country.

31. At the same session, a number of States, including Member States of the European Union, indicated that they were considering ratifying or acceding to the United Nations Assignment Convention and that, as a result, had a great interest in seeing the European Union adopt an approach to the issue of the law applicable to third party effects of assignments that would be consistent with the approach followed in article 22 of the United Nations Assignment Convention. In the discussion, strong support was expressed for holding a coordination meeting that would involve representatives of the European Commission, UNCITRAL and relevant industry to resolve the matter as soon as possible so as to remove any obstacle to wide adoption of the United Nations Assignment Convention.

32. After discussion, the Commission recommended that every effort be made to avoid that a future European Union instrument taking a different approach than article 22 of the United Nations Assignment Convention and requested the Secretariat to organize a meeting with representatives of the European Commission, Member States and industry with a view to resolving that matter as soon as possible.³³

33. The Secretariat held informal consultations with the Justice and Home Affairs Directorate of the European Commission responsible for Rome I with a view to: (i) ensuring that the new European Union instrument will be consistent with the United Nations Assignment Convention; and (ii) facilitating adoption of the United Nations Assignment Convention by European Union Member States. The Secretariat also informed the European Commission about UNCITRAL's request to hold a coordination meeting. However the meeting has not taken place so far.

34. On 15 December 2005, the European Commission published its proposal (COM (2005) 650 final, 2005/0261) for a regulation of the EU Parliament and the Council on the law applicable to contractual obligations (Rome I). Article 13 (3) adopts the law of the assignor's habitual residence for third-party effects of assignment. According to the comment to article 13 (3), the approach adopted is the approach of the United Nations Assignment Convention. Article 18, however, defines habitual residence by reference to the principal place of business (the term "establishment" is used) and, if there is a branch office, the location of the branch office. There is no comment to article 18 pointing out the difference with the location rule in the United Nations Assignment Convention (referring to the place of the assignor's central administration), as a result of which the law applicable under the proposed regulation article 13 (3) may be different from the law applicable under article 22 of the United Nations Assignment Convention.

35. The Commission may wish to consider the matter and recommend that increased efforts be made through informal or formal consultations and meetings to ensure consistency between the proposed regulation and the Assignment Convention and, in any case, to facilitate adoption of the United Nations Assignment Convention by European Union Member States.

F. OAS³⁴

36. The OAS, through its sixth Inter-American Specialized Conference on Private International Law (CIDIP VI), held in 2002, adopted the Model Inter-American Law on Secured Transactions. The thirty-fifth regular session of the OAS General Assembly held in June 2005 approved the agenda items for CIDIP VII, which includes further work on the development of uniform Inter-American registration forms as well as regulatory guidelines for secured transactions registries, and the electronic operation thereof, for implementation in conjunction with the Model Law.³⁵

37. This work will be conducted by governmental experts on an internet-based forum. The group of experts has the mandate to negotiate and draft three Inter-American instruments on electronic registries: (i) Uniform Registration Forms; (ii) Guide for Personal Property Collateral Registries; and (iii) Guide for Electronic Registries. Preparatory work will commence in June 2006 with a discussion of five Uniform Registration Forms. Although most features of the forum are public, the ability to add comments and remit documents is reserved to designated experts, including designated members of the UNCITRAL secretariat.³⁶

38. The Commission may wish to take note of this work and request the secretariat to follow this OAS project and report to the Commission in due course.

G. WIPO³⁷

39. WIPO is providing a forum for ad hoc discussions by intellectual property experts on the issue of intellectual property financing secured transactions and intellectual property rights. These discussions include an examination of the effect of the recommendations in the draft Guide on intellectual property rights.

40. The draft Guide recognizes the importance of intellectual property rights as a source of credit, either as original collateral or as incidental collateral (i.e. where the collateral is equipment including intellectual property rights). In the latter case, the collateral would be useless if the security right did not include a licence to use or sell the equipment (which would be the case if the collateral were, for example, computers incorporating software subject to copyright).

41. Accordingly, the draft Guide provides that its recommendations apply to security rights in intellectual property rights to the extent that the recommendations are not inconsistent with existing laws or international obligations of the enacting State relating to these assets. The draft Guide also calls the attention of enacting States to the need for them to consider whether it might be appropriate to adjust certain of the recommendations as they apply to security rights in intellectual property. The Working Group considered that the draft Guide could not specifically address those adjustments since to do so would require substantial work that would go beyond the time available to the Working Group for the completion of its work (early in 2007 for submission to the 2007 Commission session).

42. For that reason, the WIPO and UNCITRAL secretariats have conducted consultations with a view to undertaking further collaborative work in the area of intellectual property in the context of the draft Guide. A joint meeting of experts in secured transactions and intellectual property is scheduled for September 2006. The purpose of this meeting is to formulate proposals to the Commission for an additional chapter or appendix to the draft Guide that would deal with security rights in intellectual property rights.

43. The Commission may wish to take note of this preparatory work and request the secretariat to submit a note on the matter for consideration at the fortieth session of the Commission in 2007.

H. World Bank³⁸

44. The Investment Climate Department of the World Bank informed the secretariat of its plan to prepare, with the assistance of outside consultants, a manual for reforming collateral systems in the area of secured finance, which is aimed at assisting task managers who are working with countries to support the reform of the legal and institutional frameworks for secured lending.

45. The Commission may wish to request the secretariat to monitor developments in this regard with a view to avoiding overlap and conflict between this text and the draft Guide.

Notes

- ¹ <http://www.uncitral.org>.
- ² Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17), para. 459.
- ³ Fifty-seventh Session, Supplement No. 17 (A/57/17), para. 204.
- ⁴ Fifty-seventh Session, Supplement No. 17 (A/57/17), para. 222.
- ⁵ See <http://www.uncitral.org> for reports of the Working Groups (A/CN.9/512, A/CN.9/531, A/CN.9/532, A/CN.9/543, A/CN.9/549, A/CN.9/570, A/CN.9/574, A/CN.9/588 and A/CN.9/593).
- ⁶ Fifty-eighth Session, Supplement No. 17 (A/58/17), para. 217. See http://www.uncitral.org/uncitral/en/commission/working_groups/5Insolvency.html for reports A/CN.9/535 and A/CN.9/550 on joint sessions of the Working Groups on security interests and insolvency law.
- ⁷ <http://www.unidroit.org>.
- ⁸ See A/CN.9/WG.VI/WP.26/Add.7, rec. 4 (a) and (b).
- ⁹ See A/CN.9/WG.VI/WP.26, rec. 16.
- ¹⁰ This is the result under art. 5 (3) and 10 (1) of the draft Convention. See Study LXXVIII-Doc. 42, March 2006.
- ¹¹ See A/CN.9/WG.VI/WP.26/Add.4, recs. 29 and 30.
- ¹² See A/CN.9/WG.VI/WP.26/Add.4, recs. 41 and 41 bis.
- ¹³ See A/CN.9/WG.VI/WP.26/Add.7, note to rec. 3 (g).
- ¹⁴ See A/CN.9/WG.VI/WP.26/Add.4, recs. 46, 46 bis, 82, 83, 84 and 84 bis.
- ¹⁵ See Unidroit 2006, Study LIXA-Doc. 6, March 2006.
- ¹⁶ See Unidroit 2006, Study LIXA-Doc. 7, March 2006.
- ¹⁷ See Unidroit 2006, Study LIXA-Doc. 8, art. 1, as well as A/CN.9/WG.VI/WP.26/Add.7, rec. 3 (c) and (e), as well as definition of "acquisition security right" in A/CN.9/WG.VI/WP.24/Add.5.
- ¹⁸ See A/CN.9/WG.VI/WP.24.
- ¹⁹ See A/CN.9/WG.VI/WP.24. For more examples of conflicts between the two texts, see Unidroit 2006, Study LIXA-Doc. 7, March 2006, Comments by the UNCITRAL secretariat.
- ²⁰ See, for example, Unidroit 2006, Study LIXA-Doc. 9, comment 3 on article 2, comment C on article 3, comment B on article 7.
- ²¹ See Unidroit 2006, Study LIXA-Doc. 9, future work.
- ²² <http://www.otif.org>.
- ²³ The Convention entered into force on 1 April 2004. UNIDROIT performs depositary functions under the Cape Town Convention and its Protocol on Matters Specific to Aircraft Equipment Instruments (Cape Town, 16 November 2001) (the "Aircraft Protocol"). In such capacity, it oversees the development of an International Registry for aircraft objects as provided by the Aircraft Protocol.

²⁴ See <http://www.hcch.net>.

²⁵ <http://www.hcch.net>.

²⁶ <http://www.ebrd.com>.

²⁷ <http://www.ebrd.com/country/sector/law/st/new/develop/index.htm>.

²⁸ <http://europa.eu.int>.

²⁹ <http://europa.eu.int/scadplus/leg/en/lvb/l24401.htm>.

³⁰ http://europa.eu.int/comm/enterprise/regulation/late_payments/index.htm.

³¹ http://europa.eu.int/comm/internal_market/financial-markets/settlement/index_en.htm. The Settlement Finality Directive was adopted in May 1998.

³² http://europa.eu.int/comm/internal_market/financial-markets/settlement/index_en.htm. The Settlement Finality Directive was adopted in May 1998.

³³ See Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17 (A/59/17), paras. 104-107.

³⁴ <http://www.oas.org>.

³⁵ <http://www.oas.org/main/main.asp?slang=E&slink=http://www.oas.org/dil/>.

³⁶ http://www.oas.org/dil/esp/derecho_internacional_privado_foro_garantias_mobiliarias.asp.

³⁷ <http://www.wipo.int>.

³⁸ <http://www.worldbank.org>.

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I. Introduction

1. Pursuant to a decision taken at the twentieth session (1987) of the United Nations Commission on International Trade Law (UNCITRAL),¹ technical assistance activities is one of its priorities. These activities promote awareness and adoption of the legal texts produced by the Commission and are particularly useful for developing countries lacking expertise in the areas of trade and commercial law covered by the work of UNCITRAL. Commercial law reform, based on harmonized international instruments, has a clear impact on the ability of enterprising persons in all States to participate in international trade which plays an important part in achieving sustainable development and social stability. The technical assistance activities of the Secretariat can thus contribute to the economic integration efforts of developing countries.

2. This note lists the activities of the Secretariat subsequent to the date of the previous note submitted to the Commission at its thirty-eighth session in 2005 (A/CN.9/586 of 1 April 2005), reports on the development of resources to assist technical assistance activities and indicates possible future activities.

II. Texts of the United Nations Commission on International Trade Law

3. Through its mandate to prepare and promote the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law, including sales; dispute resolution; government contracting; banking, payments and insolvency; transport; and electronic commerce, UNCITRAL plays an important role in developing the legal framework for international trade and investment. Those instruments are widely acceptable, offering solutions appropriate to different legal traditions and to countries at different stages of economic development.

4. Those instruments include:

(a) In the area of sales, the United Nations Convention on Contracts for the International Sale of Goods² and the United Nations Convention on the Limitation Period in the International Sale of Goods;³

(b) In the area of dispute resolution, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards⁴ (a United Nations convention adopted prior to the establishment of the Commission, but actively promoted by it), the UNCITRAL Arbitration Rules,⁵ the UNCITRAL Conciliation Rules,⁶ the UNCITRAL Model Law on International Commercial Arbitration,⁷ the UNCITRAL Notes on Organizing Arbitral Proceedings,⁸ and the UNCITRAL Model Law on International Commercial Conciliation;⁹

(c) In the area of government contracting, the UNCITRAL Model Law on Procurement of Goods, Construction and Services,¹⁰ the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects¹¹ and the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects;¹²

(d) In the area of banking and payments, the United Nations Convention on International Bills of Exchange and International Promissory Notes,¹³ the

UNCITRAL Model Law on International Credit Transfers,¹⁴ the United Nations Convention on Independent Guarantees and Standby Letters of Credit¹⁵ and the United Nations Convention on the Assignment of Receivables in International Trade;¹⁶

(e) In the area of insolvency, the UNCITRAL Model Law on Cross-Border Insolvency¹⁷ and the UNCITRAL Legislative Guide on Insolvency Law;¹⁸

(f) In the area of transport, the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules),¹⁹ and the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade;²⁰ and

(g) In the area of electronic commerce, the UNCITRAL Model Law on Electronic Commerce,²¹ the UNCITRAL Model Law on Electronic Signatures²² and the United Nations Convention on the Use of Electronic Communications in International Contracts.²³

III. Technical assistance to law reform

5. In its resolution 60/20 of 23 November 2005, the General Assembly reaffirmed the importance, in particular for developing countries, of the technical assistance work of the Commission in the field of international trade law and reiterated its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission.

6. In the same resolution, the General Assembly stressed the importance of bringing into effect the conventions emanating from the work of the Commission to further the progressive harmonization and unification of private law, and to this end urged States that have not yet done so to consider signing, ratifying or acceding to those conventions. The UNCITRAL Secretariat is prepared to provide technical assistance and advice to States considering signature, ratification or accession to UNCITRAL conventions, as well as to States that are in the process of revising their trade legislation.

7. Technical assistance activities undertaken by the UNCITRAL Secretariat include: organizing briefing missions and seminars and participating in conferences to familiarize participants with UNCITRAL texts and their use; undertaking law reform assessments to assist governments, legislative organs and other authorities in developing and other countries to review existing legislation and assess their need for law reform in the commercial field; assisting with the drafting of national legislation to implement UNCITRAL texts; assisting international development agencies, such as the UNDP and the World Bank, to use UNCITRAL texts in their law reform activities and projects; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centres, on the use of UNCITRAL texts; and organizing group training activities to facilitate the implementation and interpretation of modern commercial legislation based on UNCITRAL texts by judiciaries and legal practitioners.

A. Technical assistance activities

8. Participation by the UNCITRAL secretariat and experts in the following technical assistance activities to promote the use and adoption of UNCITRAL texts and in some instances to assist with drafting the enacting legislation was financed by the Trust Fund for UNCITRAL Symposia:

(a) Belgrade, Serbia and Montenegro (18-19 June 2005), seminar on insolvency law held in cooperation with the European Centre for Peace and Development of the University of Peace (12 participants);

(b) Beijing, China (28-30 June 2005), international workshop organized by the University of Science and Technology and the Beijing Municipal Congress to consider new draft legislation on privately financed infrastructure projects (60 participants);

(c) Cairo, Egypt (12-13 September 2005), participation at the regional conference "25 Years United Nations Convention on Contracts for the International Sale of Goods" (100 participants);

(d) Singapore (22-23 September 2005), participation at the regional conference to celebrate the 25th anniversary of the United Nations Convention on Contracts for the International Sale of Goods and the 20th anniversary of the UNCITRAL Model Law on International Commercial Arbitration (180 participants);

(e) Minsk, Belarus (13-14 October 2005), UNCITRAL seminar on the United Nations Convention on Contracts for the International Sale of Goods (110 participants);

(f) Seoul, Republic of Korea (27 October 2005), UNCITRAL seminar on international trade law organized by the Ministry of Justice and the Korean International Trade Law Association (100 participants) and Cheju Island, Republic of Korea (29 October 2005) international trade law conference organized by the Korean International Trade Law Association and Cheju National University (130 participants);

(g) Geneva, Switzerland (31 October-4 November 2005), symposium organized by the UNCTAD/WTO International Trade Centre on "Multilateral trade treaties and developing economies—improving working methods and enhancing national regulatory frameworks" (60 participants);

(h) Sharm El Sheikh, Egypt (19-21 November 2005), international conference organized by the Cairo Regional Centre for International Commercial Arbitration on "The Vital Role of State Courts in Arbitration" (150 participants);

(i) Bratislava, Slovakia (23-24 January 2006), First Inter-Governmental Mediation Workshop organized by Conflict Management International and the Government of the United Kingdom (45 participants);

(j) Bogota, Colombia (27-29 March 2006), international seminar on insolvency and procurement sponsored by UNCITRAL, the Bogota Chamber of Commerce, the Colombian Foreign Office, INSOL International, the Colombian Ministry of Trade, Industry and Tourism, Pontificia Universidad Javeriana, Universidad del Rosario and Universidad Externado de Colombia (300 participants).

9. Participation by the UNCITRAL secretariat and experts in the following technical assistance activities was financed in part by the Trust Fund for UNCITRAL symposia and in part by the co-organizer:

(a) Santa Cruz de la Sierra, Bolivia (27-29 July 2005), participation at international forum on commercial law organized by the Chamber of Industry, Commerce and Services (80 participants);

(b) Rio de Janeiro, Brazil (6-11 August, 2005), lectures on UNCITRAL at the XXXII Course of International Law for the Inter-American Juridical Committee of the Organization of American States (45 participants);

(c) Chiang Mai, Thailand (26-28 September 2005), workshop on insolvency and secured transactions law organized in conjunction with the Office of Justice Affairs, Ministry of Justice, Thailand for Viet Nam, Cambodia, Myanmar and Lao People's Democratic Republic (43 participants);

(d) Cotonou, Benin (21-23 February 2006), participation at UNCTAD/WTO International Trade Centre seminar on the participation of Benin in multilateral trade treaties (25 participants);

(e) Cairo, Egypt (22-23 March 2006), Fourth United Nations Forum on Online Dispute Resolution, held under the auspices of the Cairo Regional Centre for International Commercial Arbitration and in collaboration with the Center for Information Technology and Dispute Resolution, University of Massachusetts, United States of America, the United Nations Expert Group on ODR, the Minister of Communications and Information Technology, the Arab League and UNCITRAL.

10. Participation of members of the UNCITRAL secretariat in the following activities where UNCITRAL texts were presented for examination and possible adoption or use was financed either by the organizers, another organization or in some cases, partially or totally, with resources from the United Nations regular travel budget:

(a) Presentations on the work of UNCITRAL for the International Trade Law postgraduate course sponsored by the International Training Centre of the International Labour Organization (ILO) and the Institute of European Studies (Turin, Italy, 5 April 2005);

(b) Symposium on recent developments concerning Unidroit, Loyola University (New Orleans, United States of America, 5-9 April 2005);

(c) Conference on "Tendencies in International Security Interests Law" (Bern, Switzerland, 6 May 2005);

(d) Meeting of the Unidroit Committee of Governmental Experts on the preparation of a draft convention on harmonized substantive rules regarding securities held with an intermediary (Rome, Italy, 9-20 May 2005);

(e) Workshop on international commercial law standards in Oman organized by the Commercial Law Development Program of the Department of Commerce, United States (Muscat, Oman, 10 May 2005);

(f) Meeting to discuss finalization of World Bank Reports on Observance of Standards and Codes (ROSC) methodology on insolvency and creditor rights (Washington, United States of America, 31 May-2 June 2005);

- (g) 8th biennial International Federation of Commercial Arbitration Institutions (IFCAI) conference on "Tendencies in International Security Interests Law" (Washington, United States of America, 3-4 June 2005);
- (h) WTO workshop on accession to the Agreement on Government Procurement (Geneva, Switzerland, 5-8 June 2005);
- (i) Presentation on arbitration and e-commerce organized by the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (Belgrade, Serbia and Montenegro, 15 June 2005);
- (j) African and Arab Regional Conference on Electronic Transaction Security—Digital Signature and PKI (Tunis, Tunisia, 19-23 June 2005);
- (k) Lecture on the United Nations Convention on the Carriage of Goods by Sea, 2005 International Summer Academy (Internationaler Verband der Tarifeure) (Sopron, Hungary, 23-24 June 2005);
- (l) 60th Anniversary of the Great Victory, the United Nations and International Law (Moscow, Russian Federation, 26-29 June 2005);
- (m) Assembly of Member States of the International Development Law Organization (IDLO) (Rome, Italy, 28 June 2005);
- (n) Working Group for the preparation of a new law on arbitration and mediation (Ljubljana, Slovenia, 31 August-2 September 2005);
- (o) 7th UN/CEFACT Forum (Lyon, France, 24-29 September 2005);
- (p) Presentations on procurement and the United Nations Convention on Contracts for the International Sale of Goods, 2005 International Bar Association Regional Conference (Prague, Czech Republic, 26 September-2 October 2005);
- (q) Annual meeting of the Slovenian Lawyers Association group considering legislative issues on conciliation/mediation and arbitration (Portoroz, Slovenia, 14-16 October 2005);
- (r) 99th session, ECE Working Party on Road Transport (Geneva, Switzerland, 16-18 October 2005);
- (s) Presentation on the UNCITRAL Legislative Guide on Insolvency Law for the New York Bar Association Continuing Legal Education Program "International Insolvency: What you need to know about representing multi-national companies" (New York, United States of America, 28 October 2005);
- (t) Meeting between UNCITRAL, Unidroit, the Hague Conference on Private International Law, the IMF and the World Bank on potential coordination of technical assistance work (Washington, United States of America, 1-2 November 2005);
- (u) Seminar on security interests, University of Tokyo Law School; briefing for the Ministry of Justice on the United Nations Convention on Contracts for the International Sale of Goods; seminar on security interests for the Bank of Japan (Tokyo, Japan, 1-2 November 2005);

- (v) Panel presentation on the UNCITRAL Legislative Guide on Insolvency Law for the 79th annual meeting of the National Conference of Bankruptcy Judges (San Antonio, United States of America, 3-4 November 2005);
- (w) Conference to celebrate the 25th anniversary of the United Nations Convention on Contracts for the International Sale of Goods (CISG), University of Pittsburgh (Pittsburgh, United States of America, 4-5 November 2005);
- (x) UNCTAD Advanced Seminar on Managing Investment Disputes, (Washington, United States of America, 3-11 November 2005);
- (y) Conference "Paris, Place de Droit" on the convergence of legal systems (Paris, France, 15-17 November 2005);
- (z) Presentation on the United Nations Convention on the Use of Electronic Communications in International Trade, World Society of Information Systems parallel event (WSIS) (Tunis, Tunisia, 16-18 November 2005);
- (aa) Finnish Arbitration Association seminar (Helsinki, Finland, 25 November 2005);
- (bb) Conference on development of legislation on international commercial arbitration organized by the Committee on International Affairs and Inter-Parliamentary Relations of the Legislative Chamber of the Parliament, the Cabinet of Ministers, the Chamber of Commerce and Industry of Uzbekistan and the University of World Economy and Diplomacy in cooperation with UNDP (Tashkent, Uzbekistan, 4-7 December 2005);
- (cc) Symposium organized by ICSID, OECD and UNCTAD on investment protection arbitration (Paris, France, 11-13 December 2005);
- (dd) Coordination meeting with Unidroit and the Hague Conference on Private International Law (The Hague, The Netherlands, 14 December 2005);
- (ee) Lecture on UNCITRAL's work in electronic commerce, International Development Law Organization (Rome, Italy, 16-19 December 2005);
- (ff) Seminar on transport documents, rights of suit and time for suit in relation to the preparation of a draft convention on the carriage of goods [wholly or partly][by sea] organized by the Italian delegation to UNCITRAL Working Group III (Transport) (London, UK, 23-24 January 2006);
- (gg) 2nd session of the Unidroit Advisory Board on the preparation of a model law on leasing (Rome, Italy, 5-8 February 2005);
- (hh) Round Table discussion on draft legislation on mediation sponsored by the International Finance Corporation and Ministry of Justice (Skopje, Former Yugoslav Republic of Macedonia, 10 February 2006);
- (ii) Colloquium organized by the *Journal de Droit International* on interim measures in arbitration (Paris, France, 12-14 February 2005);
- (jj) Consultations at the request of UNECE on a draft Electronic Data Interchange (EDI) protocol to the CMR Convention (Brussels, Belgium, 27 February-2 March 2006);

(kk) Lectures on electronic commerce for the University of Bologna (Bologna, Italy, 27 February-3 March 2006);

(ll) Conference of the Academy of European Law on Cross-Border Security for Credit (Trier, Germany, 9-10 March 2006);

(mm) Conference on Judicial Strategies for the Application of Egyptian E-signature Laws organized by the Commercial Law Development Program, United States Department of Commerce (Cairo, Egypt, 8-9 March 2006).

11. The use and adoption of UNCITRAL texts has also been promoted through contact with Permanent Missions to the United Nations in Vienna, Geneva and New York, as well as directly with relevant officials in some States. In particular, the Secretariat has been actively promoting adoption of the United Nations Convention on Contracts for the International Sale of Goods.

12. Members of the UNCITRAL secretariat have also conducted or participated in a number of activities in Vienna, including:

(a) Presentation on UNCITRAL activities for the Suomalainen Lakimiesyhdistys (Finnish Law Society) (8 April 2005);

(b) Presentation on UNCITRAL activities for students from The Dickinson School of Law, Penn State University, United States (18 July 2005);

(c) Presentation on UNCITRAL activities for judges from the Korean National Judicial Research and Training Institute (25 July 2005);

(d) Participation in a seminar on financial sector regulation and selected financial transactions organized by the IMF Legal Department and the IMF Institute (22 March 2006).

13. The UNCITRAL secretariat has provided assistance from Vienna with legislative drafting and other advice in many instances, including the following:

(a) China: advice on draft legislation on privately financed infrastructure projects for the municipality of Beijing;

(b) Georgia: advice on a draft Arbitration Act, based on the UNCITRAL Model Law on International Commercial Arbitration;

(c) Greece: advice on draft legislation on cross-border insolvency based on the UNCITRAL Model Law on Cross-Border Insolvency;

(d) Macedonia: advice on a draft law on conciliation based on the UNCITRAL Model Law on International Commercial Conciliation;

(e) Malaysia: advice on a draft Arbitration Act, based on the UNCITRAL Model Law on International Commercial Arbitration;

(f) Peru: advice regarding revision of the law on arbitration;

(g) Rwanda: assisting the International Law Institute with the drafting of commercial legislation for Rwanda (from March 2006);

(h) Serbia: assistance with drafting a Law on Mediation (from 2004 and ongoing);

(i) Slovenia: advice on arbitration and conciliation legislation;

(j) Commonwealth Telecommunications Organization: assistance with drafting arbitration and conciliation rules for a dispute resolution centre (from December 2004);

(k) Economic Commission for Europe: advice on the TIR Convention;

(l) European Commission: technical comments on the United Nations Convention on Assignment of Receivables in International Trade in the context of the Convention on the Law Applicable to Contractual Obligations (Rome I).

14. Since the last session, a number of additional activities were organized around the 25th anniversary of the United Nations Convention on Contracts for the International Sale of Goods and the 20th anniversary of the UNCITRAL Model Law on International Commercial Arbitration, including in Egypt, Singapore and Pittsburgh, United States of America as noted above in paragraphs 8 and 10. Proceedings of the event held in Vienna in March 2005 have been published as a special number of the *Journal of Law and Commerce*.

B. Technical assistance resources

15. A number of publications and documents prepared by UNCITRAL serve as key resources for its technical assistance activities, particularly with respect to dissemination of information on its work and texts. These resources are being developed to further improve the ease of dissemination of information and ensure that it is current and up to date.

(a) CLOUT

16. The Commission may wish to note the continuing work under the system established, pursuant to a Commission decision in 1988, for the collection and dissemination of case law on UNCITRAL texts (CLOUT). The system consists of the preparation of abstracts of court decisions and arbitral awards relating to UNCITRAL texts, compilation of the full texts of those decisions and awards, as well as of the preparation of research aids and analytical tools. As at the date of this note, 54 issues of CLOUT had been prepared for publication, dealing with 604 cases, relating mainly to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration.

17. The Commission may also wish to note that an updated CLOUT search engine is being developed in order to facilitate retrieval of published case law on the UNCITRAL website.

18. CLOUT continues to be an important tool of the overall training and technical assistance activities undertaken by UNCITRAL and the wide distribution of CLOUT in both paper and electronic formats, in all of the six official languages of the United Nations, promotes the uniform interpretation and application of UNCITRAL texts by facilitating access to decisions and awards from many jurisdictions. A number of arbitration centres worldwide have expressed their willingness to cooperate with the Secretariat in order to publish awards on UNCITRAL texts in both the CLOUT system and the Digests.

19. The Digest of Case Law on the United Nations Sales Convention, published in December 2004, is being reviewed in order to improve its uniformity in approach and style. The first draft of the digest of case law relating to the Model Law on International Commercial Arbitration is in the process of being finalized and will be published soon.

(b) Website

20. In June 2005, the Secretariat launched a redesigned website. The website, available in the six official languages of the United Nations, contains all UNCITRAL documents currently available in the United Nations Official Documents System (ODS), as well as other information relating to the work of UNCITRAL.

21. The number of visitors to the UNCITRAL website has increased threefold since the launch of the new website. About half of the traffic is directed to pages in English, one quarter to pages in French and Spanish, and the remaining quarter to pages in Arabic, Chinese and Russian.

22. The website is being continuously expanded with new tools. Envisaged future additions include pages specifically designed for technical assistance and dynamic components, such as, for instance, a search engine for CLOUT cases (see above, paragraph 16).

23. The Secretariat has also initiated a major exercise, with the assistance of the Dag Hammarskjöld Library in New York and the United Nations Library in Geneva, to digitize all official documents of UNCITRAL issued since the establishment of the Commission. The digitized documents will be uploaded in the ODS and links to those documents will be made available on the UNCITRAL website.

(c) Library

24. The UNCITRAL Law Library was established in 1979 in Vienna. Since its establishment, the Library has been providing services not only to UNCITRAL delegates and to the staff of the Secretariat, but also to the staff of permanent missions and the staff of other Vienna-based international organizations. It has also provided research assistance to scholars and students from many countries.

25. The collection of the UNCITRAL Law Library focuses mainly on international trade law and currently consists of over 10,000 monographs; 150 active journal titles; legal and general reference material, including non-UNCITRAL United Nations documents, and documents of other international organizations; and electronic resources (restricted to in-house use only). Lately, particular attention has been given to expanding the holdings in all of the six United Nations official languages.

26. The UNCITRAL Law Library maintains an on-line public access catalogue (OPAC) jointly with the other United Nations libraries in Vienna and with the technical support of the United Nations Library in Geneva. The OPAC is available via the library page of the UNCITRAL website.

(d) Publications

27. UNCITRAL traditionally has two series of publications, in addition to official documents, which include the texts of all instruments developed by the Commission and the UNCITRAL *Yearbook*.

28. The Secretariat has developed a new visual identity (see UNCITRAL Legislative Guide on Insolvency Law and UNCITRAL *Yearbook* 2002) to be used for both hard copy and electronic publications, with increasing focus on the latter. A new book providing basic facts about UNCITRAL, which will include a CD-ROM of all UNCITRAL texts, will be published in 2006.

(e) UNCITRAL Yearbook

29. Pursuant to General Assembly Resolution 2421 (XXIII) of 18 December 1968, UNCITRAL has, since its inception, issued a *Yearbook* with the aim of making its work more readily available. The UNCITRAL *Yearbook* is currently published in both hard copy and CD-ROM in 4 languages (English, French, Spanish and Russian) and includes all working papers and Commission documents issued in a particular year, as well as summary records for those parts of the annual session of the Commission devoted to consideration and finalisation or adoption of a legislative text.

30. Over the last few years, the steady increase in UNCITRAL's work has meant a corresponding increase in the size of the *Yearbook* and delays in publication have occurred. The last edition published was the English version of the 2002 *Yearbook* (hard copy and CD-ROM), which was approximately 700 pages. The increased size of the *Yearbook* has also led to escalating costs, particularly with respect to the printed version.

31. The Commission may wish to note that the Secretariat will adopt the following approach with a view to reducing the costs of publishing the *Yearbook* and achieving more timely publication. The Commission may wish to comment on these issues.

(i) Simplify the procedures for collating and editing the documents. The current approach requires all documents to be collated and edited so that, for example, footnotes are consecutive throughout the *Yearbook* and references are consistent between different papers. This could be simplified so that the *Yearbook* would appear more as a collection of documents in the form in which they were originally issued (e.g. as a working paper or Commission document), thus saving on editing, additional translation and typesetting. This approach might also facilitate making the *Yearbook* available in Chinese and Arabic;

(ii) Encourage distribution of the *Yearbook*, including to depositary libraries, on CD-ROM only. It might be technically feasible to produce a single CD-ROM containing all language versions of the *Yearbook*.

(f) Information

32. To improve the availability of up to date information on the status and development of UNCITRAL texts, efforts have been made to ensure that press releases are issued when treaty actions are taken or information is received on the

adoption of a model law. Those press releases are provided to interested parties by email and are posted on the UNCITRAL website, as well as on the website of the United Nations Information Service (UNIS) in Vienna.

33. The Secretariat currently addresses approximately 1500 general inquiries per year concerning, inter alia, technical aspects and availability of UNCITRAL texts, working papers, Commission documents and related matters. Increasingly, these inquiries can be answered by reference to the UNCITRAL website.

IV. Extrabudgetary funding

(a) UNCITRAL Trust Fund for symposia

34. In the period under review, contributions were received from Mexico and Singapore, to whom the Commission may wish to express its appreciation.

35. The ability of the Secretariat to implement the technical assistance component of the UNCITRAL work programme is contingent upon the availability of extrabudgetary funding, since the costs of technical assistance activities are not covered by the regular budget.

36. The UNCITRAL Trust Fund for symposia supports technical assistance activities for the members of the legal community in developing countries; participation of UNCITRAL staff, as speakers, at conferences where UNCITRAL texts are presented for examination and possible adoption; and fact finding missions for law reform assessments in order to review existing domestic legislation and assess country needs for law reform in the commercial field.

37. The Commission may once again wish to appeal to all States, relevant United Nations Agencies and bodies, international organizations and other interested entities to make contributions to the Trust Fund, if possible in the form of multi-year contributions, so as to facilitate planning and to enable the Secretariat to meet the increasing demands from developing countries and States with economies in transition.

(b) UNCITRAL Trust Fund to grant travel assistance to developing countries members of UNCITRAL

38. The Commission may wish to recall that, in accordance with General Assembly resolution 48/32 of 9 December 1993, the Secretary-General was requested to establish a Trust Fund to grant travel assistance to developing countries that are members of UNCITRAL. The Trust Fund so established is open to voluntary financial contributions from States, intergovernmental organizations, regional economic integration organizations, national institutions and non-governmental organizations, as well as to natural and juridical persons. In the period under review, no contributions were received.

39. In order to ensure participation of all Member States in the sessions of UNCITRAL and its Working Groups, the Commission may wish to reiterate its appeal to relevant bodies in the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to

provide travel assistance to developing countries that are members of the Commission.

40. It is recalled that in its resolution 51/161 of 16 December 1996, the General Assembly decided to include the Trust Funds for UNCITRAL symposia and travel assistance in the list of funds and programmes that are dealt with at the United Nations Pledging Conference for Development Activities.

V. Future activities

41. Since the last report on technical assistance activities (A/CN.9/586 of 1 April 2005) the Secretariat has focused, *inter alia*, on the development of a work programme for its expanded technical assistance functions.

42. In this context, the Secretariat will hold a meeting with Permanent Missions in Vienna in April to brief member States on the objectives and planning of technical assistance and to strengthen the links with the Permanent Missions in Vienna so as to be able to quickly identify future legal assistance needs and requirements in various regions of the world. The Secretariat is also exploring the possibility of enhancing partnerships with other United Nations agencies and international organizations in order to further improve its capacity-building activities.

43. Finally, the Secretariat is considering the opportunity to develop a capacity-building programme on selected UNCITRAL instruments focusing on developing countries and countries in transition to enhance local capacity to master and apply UNCITRAL texts.

Notes

¹ *Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17)*, para. 335.

² 11 April 1980, United Nations, *Treaty Series*, vol. 1489, p. 3, *Official Records of the United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980* (United Nations publication, Sales No. E.82.V.5), part I.

³ *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, New York, 20 May-14 June 1974* (United Nations publication, Sales No. E.74.V.8), part I; United Nations, *Treaty Series*, vol. 1511, pp. 77 and 99; UNCITRAL *Yearbook 1980*, part three, chap. I, sect. C.

⁴ United Nations, *Treaty Series*, vol. 330, No. 4739.

⁵ *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 57; UNCITRAL *Yearbook 1976*, part one, chap. II, sect. A.

⁶ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)* chap. V, sect. A, para. 106; UNCITRAL *Yearbook 1980*, part three, chap. II.

⁷ *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)* Annex I, UNCITRAL *Yearbook 1985*, part three, chap. I.

⁸ UNCITRAL *Yearbook 1996*, part three, chap. II.

- ⁹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17), Annex I, UNCITRAL Yearbook 2002, part three.*
- ¹⁰ *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 (A/49/17), Annex I, UNCITRAL Yearbook 1994, part three, chap. I.*
- ¹¹ United Nations publication, Sales No. E.01.V.4, A/CN.9/SER.B/4.
- ¹² *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/57/17), annex I.*
- ¹³ UNCITRAL Yearbook 1988, part three, chap. I, General Assembly resolution 43/165, annex.
- ¹⁴ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17), annex I.*
- ¹⁵ New York, 11 December 1995, United Nations, *Treaty Series*, vol. 2169, p. 163; *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17) annex I.*
- ¹⁶ UNCITRAL Yearbook 2002, part three; General Assembly resolution 56/81, annex.
- ¹⁷ UNCITRAL Yearbook 1992, part three, chap. I.
- ¹⁸ *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17 (A/59/17), para. 55.*
- ¹⁹ Hamburg, 31 March 1978 United Nations, *Treaty Series*, vol. 1695, p. 3; *Official Records of the United Nations Conference on the Carriage of Goods by Sea, Hamburg, 6-31 March 1978* (United Nations publication, Sales No. E.80.VIII.1), document A/CONF.89/13, annex I.
- ²⁰ A/CONF.152/13, annex.
- ²¹ *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), annex I.*
- ²² *Ibid.*, Fifty-sixth Session, Supplement No. 17 (A/56/17), annex II.
- ²³ New York, November 2005, General Assembly resolution A/RES/60/21, annex.